

CAMPAIGN FINANCE REFORM PROPOSALS OF 1996

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Campaign Finance Reform Proposals o...NGS

BEFORE THE

COMMITTEE ON
RULES AND ADMINISTRATION
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION

ON

PROPOSALS PERTAINING TO THE
FINANCING OF SENATE ELECTION CAMPAIGNS

S. 46, S. 1219, S. 1389 AND S. 1528



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FEBRUARY 1, MARCH 13, MARCH 27,
APRIL 17, MAY 8, AND MAY 15, 1996

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CAMPAIGN FINANCE REFORM

THURSDAY, FEBRUARY 1, 1996

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m., in Room SR-301, Russell Senate Office Building, Hon. John Warner, chairman, presiding.

Present: Senators Warner, McConnell, Cochran, Inouye, and Feinstein.

Staff Present: Grayson Winterling, Staff Director; Edward H. Edens IV, Professional Staff Member; Bruce E. Kasold, Chief Counsel; Virginia C. Sandahl, Chief Clerk; Mary Louise Faunce, Assistant Chief Clerk; Kennie L. Gill, Democratic Staff Director and Chief Counsel; and John L. Sousa, Democratic General Counsel.

Senator MCCONNELL. [Presiding.] This hearing will come to order. Our chairman, Senator Warner, is in traffic between the National Prayer Breakfast and the Russell Building and asked that I go ahead and begin the hearing for him. We will start with opening statements. I understand that Senator Feinstein and Senator Inouye may have to leave at 10 o'clock, and hopefully they will be able to come back.

I want to thank Senator Warner for agreeing to have these hearings. It seems to me sort of an endless issue. I feel like I have been dealing with this all of my life, going back to part-time teaching days in the mid-seventies, and it is a subject, of course, of enormous interest to many of us.

While the issue before us today was not in the Contract With America and has not been an agenda item of my party, it does continue to attract inside-the-Beltway and editorial board interest, in my view, all out of proportion to the pressing concerns of the rest of the country. And besides, no election year would be complete without this debate. It seems like we have it every election year.

Senator Warner will point out that this is the first in a series of hearings we will be having on this subject, giving everybody an opportunity to be heard. It will provide a forum for organizations whose ability to participate in the political process

would be severely impacted by some campaign finance proposals before Congress. The hearings will illuminate the tremendous ramifications that proposed changes in the campaign finance laws would have on the American people's freedom to participate in elections and influence their government.

"The era of big government is over," so said the President last week, to thunderous applause from both sides of the aisle. Big government, he said, is over. You would not know it from looking at the particular proposal before us today.

S. 1219, like all the spending limit proposals which preceded it, is the ultimate big government boondoggle. It is nothing less than a government takeover of the electoral process. It would have the government micromanaging every nuance of campaign politics. Its complicated spending limit formula would effectively quantify speech, putting the Federal Government in the business of doling out First Amendment rights as it sees fit. Government bureaucrats would be charged with crawling all over every congressional campaign to administer and enforce the new "reforms." Some have said the FEC would soon be the size of the Veterans' Administration.

Incidentally, I use the term "reform" loosely because it is a moniker which the bills before us, in my view, do not deserve. Reform suggests improvement, and no spending limit bill can ever be an improvement because the whole approach is inherently big government, undemocratic, and, in the case of S. 1219, grossly unconstitutional, as we will hear from witnesses later today.

Claims that this bill is bipartisan, it seems to me, with all due respect to my friends and colleagues of my party who sit at the table, are a bit overblown. I think it is important to note that the Republican National Committee and the Republican Senatorial Committee are opposed to this bill. The Democratic chairman and the chairman of the Democratic National Committee are in favor of this bill. That seems to me at the outset to give one pause as to whether or not this is a bipartisan bill.

In addition, the American Civil Liberties Union, from whom we will hear later in the day, the National Right to Life Committee, the National Rifle Association, the National Association of Broadcasters, the National Taxpayers Union, and the Direct Marketing Association will all be testifying against this bill. Also, while they don't take positions on specific legislation, the Cato Institute and the Heritage Foundation are highly critical of this legislation.

Now, obviously, there is no doubt that the bill's proponents have good intentions. Unfortunately, even the best of intentions can have the worst of results.

The First Amendment is the premier political reform. The First Amendment should be the touchstone of all political reform efforts, not opinion polls, not editorials, not partisan advantage,

not personal interest. The First Amendment should be the touchstone of campaign finance reform, but it would not be under this proposal.

Sadly, too often the First Amendment is regarded as merely a nuisance, frustrating campaign finance reform efforts, an impediment which must be overcome at all costs, even to the extent of changing the Constitution itself. We have even had votes on that on the floor here over the last few years.

S. 1219 is the latest in a series of efforts to do an end run around the Constitution. It would have the government coerce citizens, some of whom may be candidates, into forfeiting freedoms which the Constitution dictates cannot be stripped by congressional edict.

S. 1219's proponents claim that the bill's limits on spending and speech are voluntary, as if repetition makes it a fact. The truth is S. 1219 is voluntary in name only. The limits on spending and speech are about as voluntary as an armed robber's request for someone's wallet or a carjacker's request for someone's automobile.

For that reason, were S. 1219 or any permutation of it ever to become law, the Supreme Court, of course, would be the final arbiter. And there is no doubt among any recognized constitutional experts on this subject with whom I am familiar that S. 1219 would be struck down as unconstitutional.

Some may argue that, precedence notwithstanding, Congress should push the constitutional envelope because pollsters tell us campaign spending limits have popular appeal. Let Congress issue the pro-reform press releases, and let the Court sort out the collateral constitutional damage. So goes the argument.

Poll results are the most compelling argument advanced in support of S. 1219. Yet the entire debate is rife with misinformation, distortion, and hyperbole. Were people aware that we spend on politics in this country about what we spend on bubble gum every year, the poll results would be different. And as any seasoned political observer knows, poll results hinge on poll questions. Garbage in, garbage out.

Campaign finance polls prefaced with a discussion of constitutional freedom and citizen participation would yield results very different from those often cited in support of S. 1219. Senators take an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic. We did not swear true faith and allegiance to polls.

My personal quest and the goal of this and subsequent hearings will be to thoroughly examine and air all the issues in the campaign finance debate. The facts overwhelmingly argue against undemocratic, unconstitutional bills like S. 1219 that are put forth in the name of reform. I expect that the hearing we will be having will bear that out.

The American people should be fully informed that what is being advanced is a new entitlement program for politicians.

They should know that in political campaigns spending limits are speech limits. They should know that the phrase "legalized bribery" is an oxymoron, useful to incite rather than to enlighten.

Finally, the American people should know that S. 1219, in my view, would be to democracy what the Clinton health care bill would have been to medicine.

With that statement of ambivalence about this bill—

[Laughter.]

Senator MCCONNELL. —let me now call on my friend and colleague, Senator Inouye, for any opening statement he might want to make.

Senator INOUE. Mr. Chairman, first, our regrets and apology. As you know, much as we consider the subject matter being discussed as most important to our democracy, we will not be able to stay any longer because of a caucus that has just been called. But I can assure you that the members will read the testimony of our colleagues and others with great care.

I ask unanimous consent that an opening statement by our ranking member, Senator Ford, be made part of the record.

Senator MCCONNELL. Without objection.

[The prepared statement of Senator Ford follows:]

OPENING STATEMENT OF HON. WENDELL H. FORD, RANKING MEMBER, A
U.S. SENATOR FROM THE STATE OF KENTUCKY

I wish to welcome our witnesses, particularly our colleagues, to our first hearing on campaign finance reform this Congress. This is the first in what will be a series of hearings on campaign finance reform. It is an important issue to this Committee, and to the American people, and I commend the Chairman for his leadership in placing campaign finance reform at the head of our hearing agenda.

I look forward to the testimony of the distinguished panels of witnesses and the input of our colleagues. Due to the Senate schedule, and previous commitments, several of our colleagues on the Committee are unable to be with us this morning. However, I can assure my colleagues, and our other witnesses, that their testimony will be received and reviewed by the entire Committee.

I would ask, Mr. Chairman, that the hearing record remain open for the usual 10 days to allow Members of the Committee and our witnesses to submit additional information or respond to written questions from Committee members.

Senator MCCONNELL. Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Mr. Chairman, I would ask unanimous consent that a statement by Senator Dodd be placed in the record.

Senator MCCONNELL. Without objection.

[The prepared statement of Senator Dodd follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR
FROM THE STATE OF CONNECTICUT

Mr. Chairman, I wanted to take a few moments to speak about the McCain-Feingold campaign finance reform bill, which I have co-sponsored along with other Republicans and Democrats in both the House and Senate.

Reforming the campaign finance system may be the most important issue facing Congress today. More than any other time in our history, the American people's faith in government has hit a disturbingly low point.

A recent poll shows that half of all Americans believe lobbyists and special interests control what goes on in Washington, not Congress or the President. Sixty percent believe special interest contributions directly affect the votes of the legislators who represent them. This is due in large part to the pervasive, almost epidemic, role of money in political campaigns.

The corrosive influence of money in our political system is indisputable. The average Senator must raise \$12,000 per week every week for 6 years to run for re-election. In 1976, the average winning Senate candidate spent \$600,000. In 1994, that figure was up to \$4.5 million. Today, public officials spend more time raising money than they do serving the public good.

It used to be that public officials were judged by their ideas or their character. Today, it's often the size of their wallets and how much of their own money they can throw into a political campaign. In 1994, one candidate running for the Senate spent over \$28 million of his own money.

In light of these facts, I find it particularly disturbing to read Speaker Gingrich's recent comments on this issue. The Speaker believes, and I quote: "We are literally starving the political process. Our problem is that we spend too little money."

After watching the Republican-dominated Congress cater to special interests over the past year by passing huge tax breaks for wealthy contributors and gutting environmental regulations to placate polluters it is of little surprise that the Speaker would feel this way.

It is no wonder that the American people are cynical toward government, when they see lobbyists writing not just checks, but legislation too. This is not the kind of "change" the American people voted for in 1994.

Special interests and big money simply have too much influence on the political process. It's wrong and about time we put a stop to it. And the McCain-Feingold bill takes an important step forward by prohibiting contributions from political action committees.

I am not an unaffected bystander in this debate. As a Senator and now as Co-Chairman of the Democratic Party, I have succeeded by working within the framework of the present system. And over 20 years of public service in both the House and the Senate have clearly demonstrated to me that the current system is desperately in need of reform.

The McCain-Feingold bill leads us in the right direction toward sensible reform. However, it is by no means a perfect bill and some of its provisions need further work. In particular, the financing arrangements would pose challenges for candidates from small states. Additionally, we need to be sure that working people are not restricted from participating in the political process and that grass-roots and volunteer activities are not constrained.

Overall, McCain-Feingold is a good place to start our efforts in ending the influence of money on the political system. I have challenged my colleagues Senator D'Amato, who is Chairman of the National Republican Senatorial Committee, and National Republican Committee Chairman Haley Barbour to join me in endorsing this bill.

Let's show the American people we're serious about reform and that we can use this opportunity to elevate campaign finance reform, in a bipartisan manner, above the normal political fray. I pledge that in the coming days and weeks, I will do everything in my power to bring this issue before the Senate.

[The prepared statement of Senator Pell follows:]

PREPARED STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM
THE STATE OF RHODE ISLAND

Mr. Chairman, I congratulate you for your leadership in scheduling what I understand will be a series of hearings to examine many facets of political

campaign reform. I hope that the end result will be carefully crafted legislation that will address the major problems that are identified.

It seems to me that one of the most important issues to be considered is the high cost of television advertising, which appears to be a major factor in driving up the cost of campaigning at all levels. I believe there is a simple and direct remedy, namely to require that broadcasters provide substantial free time to political campaigns, as a condition of their use of a segment of the broadcast spectrum.

I have sponsored legislation providing for such free time grants for political campaigns for the past ten years, and I remain committed to the concept. Indeed, one of the main reasons I became an early cosponsor of the McCain-Feingold bill was the fact that, in addition to its many other strong points, it provides for free television time.

I hope the committee will examine this particular problem and consider carefully the various legislative solutions which are being proposed.

Once again, I applaud your leadership in scheduling these hearings and hope they will lead to qualitative improvements in the electoral campaign process.

TESTIMONY OF A PANEL CONSISTING OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA; HON. JOHN MCCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA; HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN; HON. FRED THOMPSON, A U.S. SENATOR FROM THE STATE OF TENNESSEE; HON. PAUL WELLSTONE, A U.S. SENATOR FROM THE STATE OF MINNESOTA; AND HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator FEINSTEIN. Mr. Chairman, I completed in November my tenth political campaign. Three of them were very big: one for Governor of the State of California and two for the United States Senate. I would like to share with you what my team raised in those three campaigns: in 1990, for Governor, \$19,770,000; in 1992, for the Senate, \$8,054,000; and in 1994 for the Senate, \$14.5 million. That totals in three campaigns \$42,231,463.

Mr. Chairman, I am a walking, talking case exhibit for campaign spending reform, and I would like to submit that I believe the time has come for the Senate and the House to rally to the challenge and produce some legislation which can reduce the impact and need for fund-raising and dollars in American national House and Senate campaign.

I supported the legislation introduced and passed by this body in 1993. But I came back to Washington after this last campaign with a renewed commitment. I mentioned that I raised \$14 million. My opponent outspent me by better than 2 to 1. That should not be the case for a United States Senate seat, even in a State as big as the State of California.

I worked earlier with Senator McCain and Senator Feingold in trying to come up with some legislation that might solve the problem. We had some differences of opinion, and I kind of split off, as you might say, and have introduced my own bill, Senate bill 1389, which is rather simple. None of it, I think, is

pioneering, but it takes three concepts that have been well tested and I think could come together to form a bill which would pass this House and the other House and be signed by a President. It is not perfect, but it does put us on the road to campaign spending reform.

Essentially what it does is—one, curbs the astronomical amounts of money that flood campaigns; two, creates a level playing field between wealthy candidates who finance their own campaigns and candidates who cannot; and, three, makes a stab in honesty in campaign advertising.

I think we have seen the meteoric rise of negative campaign advertising, and I think to tackle campaign financing reform without trying to create honesty in the media is a mistake. So among the bill's key provisions are voluntary spending limits, again, as we did last year, or 1993, based on voting age population; provisions related to spending from personal funds to create a level playing field; and disclosure requirements for political ads.

As you mention, for almost 20 years now, this Congress has studied and debated this issue. During that time, spending in Senate races has increased more than 500 percent while the cost of living has just doubled. So it is five times the cost of living.

The last election cycle tells a lot about the absurd levels campaign spending has reached. According to the Federal Election Commission, congressional candidates in 1994 alone raised and spent over \$724 million, the highest amount ever recorded in any election cycle in the Commission's 20-year existence. The fund-raising pressure on candidates to meet the ever growing demand is enormous, and I know it firsthand. It is increasing with every new election cycle, and it clearly discourages otherwise qualified candidates from running.

So the legislation I put forward today, as I said, is limited and simple. Not a lot of it is new. There are a few new twists, but it really is combining the three things I have presented.

The voluntary spending limits, which would be based on each state's voting age population, range from a high of \$8.2 million in a large state like California to a low of \$1.5 million in a smaller state like Wyoming. The rules, as I said, are the same as those reported by the Rules Committee in the Senate bill of last session.

In return for voluntarily controlling spending, the candidate receives a bonus, and this is the carrot to go along with the voluntary limit: 30 minutes of free broadcast time, a proposal which is based on a bill Senator Dole introduced in the 102d Congress; 50 percent discount on television time over and above the free time; and reduced postage rates on two pieces of mail to each voting age resident in the state. These latter two benefits were in the bill passed by the Senate in the last Congress.

The bill evens the playing field between incumbents and challengers by making critical advertising time available to challengers and incumbents alike, 30 minutes of broadcast time

free and the rest at half price. With 30 to 40 cents of every dollar raised—and I think it is really well over half of every dollar raised. Certainly in my case far over half went to buy media advertising. Free media time and a 50 percent broadcast discount rate will not only reduce campaign costs, but will also serve as a powerful incentive for candidates to agree to voluntary spending limits.

This legislation, which mirrors parts of the campaign finance bill introduced by Senator Dole in the last Congress, also attempts to limit the ability of a wealthy candidate to buy a seat in Congress. Now, this is where the provisions are a little different than anything anybody has introduced prior to this time.

Under this bill, after qualifying as a candidate for the primary, a candidate must declare if he or she intends to spend more than \$250,000 of their own funds in the election. If the candidate says yes, I am going to spend more than \$250,000 of my own money in this election, then the contribution limits on his or her opponent will be raised from \$1,000 to \$5,000. If a candidate declares that he or she will spend more than \$1 million on the race from their own pocket, then the contribution limits on his or her opponents are removed entirely.

With my case, where somebody came forward and said I will spend \$30 million of my own money—still a disbelief to me to say that huge amount—there is no way, no matter how proven a fund-raiser you are, that you can compete with that kind of money. It is impossible. This would enable an individual at least to compete because the spending limits then go off of them.

It is not an ideal way. I am the first one to admit it. But outside of the expenditure of public money, it is the only way I can find. I believe this requirement will minimize the advantage of enormous personal wealth in campaigns while maximizing the opponent's time to pursue a campaign on the issues rather than being caught in what is quickly becoming a quicksand of fund-raising.

Now, I recall coming to this body having to run again in 2 years and run against an opponent who spent in excess of \$30 million of his own money from the get-go. You can't compete with the campaign spending limits. That is a fact. You can't compete, if someone is going to put that kind of big money, with campaign spending limits.

Let me for a moment speak about honesty in campaign advertising. I really thought that campaigns are freewheeling, that they are rough and tumble; I participated in very hard mayor's races in San Francisco. But I never saw the degree to which negative ads permeate the campaign spectrum as I did in my last campaign.

In recent years, the amount of negative advertising, libelous and personal attacks in campaign ads, has exploded. A candidate has virtually no recourse to the courts to stop this. And all

experts are predicting that in the next set of races it is going to get even worse. Campaigns that rely on unchecked character assassination with no regard to the validity or truth of the charges have contributed to unprecedented voter cynicism and apathy. They say, "A pox on both your houses; we are just not going to vote."

In the 1994 campaign, negative ads, groundless attacks on character, distorted facts dragged political advertising to a new low. In my campaign, at least two television stations and one radio station ran a disclaimer before my opponent's ads in an attempt to absolve their station of responsibility and liability for the content of the ads, and noting that the reason they ran the ads is because they were required by law to do so and in some cases is based upon a deliberate strategy of alienating voters in order to depress turnout. The result, again, is public cynicism and the enormous disaffection people feel with political leaders and the process itself.

Most of us would like, but we are limited in our ability, to curtail negative advertising because of First Amendment considerations. But we can hold candidates and campaign committees more responsible for what they do, or we can individually decide just not to do it ourselves. I resolved not to do it myself, not to respond. As a result, my poll numbers dropped by over 20 points.

When we did focus groups, we found that it was the negatives that blasted through and the positives simply couldn't compete. People tend to believe where there is smoke, there is fire. They believe the negatives, but they wouldn't believe the positives. That is a sad, sad case in American political affairs.

So what has happened—and I believe this is fairly typical across the United States—is that campaign consultants are finding that the negative ads cut through; the positive ads don't. So the tendency has been on an increasing basis to go to negative campaign advertising.

The provisions in my bill would set minimum standards for disclosure in print, on radio, and on television. The bill requires disclaimers in television ads to appear for at least 4 seconds, with a reasonable degree of color contrast between the background and the printed statement. It requires a clearly identifiable photograph or other image of the candidate if the ad is paid for by the candidate or the candidate's committee, and a statement at the end of the ad by the candidate indicating, "This is Dianne Feinstein, and I have approved this ad."

The thrust of this is to connect the responsibility between the consultant who does the ad and the candidate whose campaign runs the ad. After all, the candidate is eventually responsible.

The bill also requires sponsors of other advertisements, such as independent campaigns, to indicate in a statement that they are responsible for the veracity of the content of the ad. What is not contained in my bill is any public financing of campaigns. It

is my belief that the American people are not ready to accept additional public financing of campaigns at this time.

Now, some have opposed spending limits as contrary to the Supreme Court's decisions in *Buckley v. Valeo*, which rejected mandatory limits unless they are proposed, for example, in an exchange for public benefits. This bill strikes a balance called for in this decision by making the spending limits voluntary and tying them to public benefits.

The Congressional Research Service has advised the Senate that a complete ban on contributions and expenditures by connected and non-connected PAC's appears to be unconstitutional in violation of the First Amendment. The Supreme Court has repeatedly held that campaign contributions and expenditures are a form of political speech protected by the First Amendment to the United States Constitution.

While the activities of some political action committees need to be scrutinized, others give the small person, the ordinary person, a voice in politics. And they allow many people who can afford to make only small contributions to band together so that their voices can be heard.

Let me point out, of the total of my Senate race, less than 16 percent was from PAC contributions. So I am not a candidate that depends on PAC contributions to proceed. I would vote to ban PAC's. I did before. I would do it again. I recognize that no bill is going to pass the House that does. Having said that, what I think I feel strongly about is, whether you are the Christian Coalition, whether you are the Americans for Democratic Action, whether you are EMILY's List, or whether you are Wish List, non-connected PAC's should have the ability to say: We, this body, support this candidate. If you, Mr. and Mrs. America, want to join us in support of that candidate, send us your small check; we will put it together, or bundle, and send those small checks to the candidate.

I believe this is an important part of American political life. I happen to be a supporter of bundling. I also happen to think that with both the Wish List and with EMILY's List, this is an important tool for women new to the process to come together and be able to support female candidates. This is where I came a cropper in working with Senator McCain and Senator Feingold, whose bill is different in this respect.

So we have tried in this bill to eliminate that consideration. I tried to find a way to protect the non-connected PAC and the bundling, but could not, and to outlaw the connected PAC, but could not. So my bill is silent on this issue.

I was encouraged when President Clinton and Speaker Gingrich agreed to set up a bipartisan commission to study and perhaps finally act on campaign finance reform. But apparently that agreement appears to have since become bogged down. This issue has been studied and studied and studied, and not only by this Congress but, as you said, Mr. Chairman, for 20 years and

by a bipartisan commission whose recommendations were made to Congress in 1990. I think it is time for this commission—for this Congress to act. I think it is important to pass out a piece of legislation, and I hope a simple bill that is based on what others have proposed over the past and which would aim at spending limits, which would aim at equaling the playing field, would aim at honesty in campaigns and would have no Federal financing, would have some chance of consideration by this committee and this body.

I thank you.

Senator MCCONNELL. Thank you, Senator Feinstein.

Senator Cochran, would you like to make some opening comments?

Senator COCHRAN. Mr. Chairman, let me simply thank you for convening these hearings. I am not going to take the time of the witnesses and make a long statement, although I certainly congratulate all of those who are offering suggestions and making observations about how we need to improve the campaign finance system. I think it is very clear to everybody who is looking at America's political system at work today that there are seats in the Senate for sale, and there are in the House. Those who are very wealthy have a great advantage over those who are not, and that is now spilling over into the Presidential election campaign. It is very clear what is happening.

I had one Senator tell me that one of the candidates for President has spent more in advertising in his State than he spent in getting elected to the Senate. And this campaign has just started. It is absolutely absurd. Something has to be done.

So I congratulate those who are working hard to put together alternatives to the present system, and I look forward to their testimony. I hope we will also include in our effort not only the individual expenditure by candidates, which are serious problems in many instances, but also the campaigns by outside groups who are not involved as a political party, not as a candidate. They raise and spend a lot of money, buy ads on television, or in other ways try to influence voters. They don't have to publish, they don't have to report where they get the money. They don't have to report what they do with it. They are not limited in any way in terms of individual contribution amounts, and they are free to put on television whatever they choose. You can try to deal with that by limiting what a candidate can do and what a candidate must do, but it doesn't work. You are just turning over, then, the campaign process to these groups, and whoever wants to take it over can do it.

So we have some problems on our hands, and I know the Senators who are here realize that, and I am anxious to hear their testimony. Thank you.

Senator MCCONNELL. Thank you, Senator Cochran.

Senator McCain?

TESTIMONY OF HON. JOHN MCCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman. I want to thank you for holding this hearing, and I want to thank Senator Warner, who I understand has been delayed from being here. I will be brief, Mr. Chairman, because I have three of my colleagues here and I know there are many other witnesses.

I would like to frame this discussion around some very important facts, following on Senator Cochran's remarks. Every poll that has been published in the last year or so shows that Congress has about a 30 percent approval rating. A Wall Street Journal poll not too long ago said that 18 percent of the American people believe that Congress can be counted on to do the right thing "some of the time."

One of the best pollsters that I know is Mr. McInturf, who is the head of an organization called Public Opinion Strategies, who, by the way, is doing Senator Dole's polling. Recently he took a poll and asked three questions that I think are important. When asked which of the following do you think really controls the Federal Government in Washington, registered voters responded the lobbyists and special interests, 49 percent; Republicans in Congress, 25 percent; haven't thought about it, 14 percent; the President, 6 percent; Democrats in Congress, 6 percent.

When asked those who make large campaign contributions get special favors from politicians, respondents said that this is one of the things that worries you most, 34 percent; worries you a great deal, 34 percent; worries you some, 20 percent.

When asked do we need campaign finance reform to make politicians accountable to average voters rather than special interests, voters stated this was very convincing, 59 percent; somewhat convincing, 31 percent; not very convincing, 5 percent.

Mr. Chairman, the fact is this issue is an important issue with the American people. I spend a lot of time traveling around the country and in my State. The issue always comes up.

By the way, the Heritage Foundation, who you referred to in your opening statement, discussed the issue in September 1995, "Campaign Finance Reform: Time for Another Look."

None of us here at this table believes that we have a perfect document. I deeply regret that Senator Feinstein and we parted company on the issue of bundling and the Emily's List issue. But I don't believe that is a deal breaker. I think that what we have put together here for the first time in 10 years is a bipartisan bill. In the House, Congresswoman Linda Smith and Congressman Meehan, with about 70 others, have put together this same bill. They are trying to move forward, my understanding is by means of a discharge petition.

Over 50 newspapers, Mr. Chairman, have editorialized in favor of this bill, newspapers as diverse as The New York Times, the Roanoke Times, the World News, Christian Science Monitor, Los Angeles Times, Kansas City Star, and others.

I want to emphasize this bill is not perfect, but it is based on several fundamental principles, one of which is no taxpayer funding. Another is that there would be voluntary limits. And if the candidates do not comply with those limits, then there is a reward for those candidates that do.

It also bans the personal use of campaign funds. It bans political action committees. If, as Senator Feinstein just discussed, that is not viewed as constitutional by the Supreme Court, then we reduce the PAC contributions back to that of an individual.

The Congressional Research Service recently noted in a study: "Incumbents have received far more PAC money than challengers and in growing dollar gaps, from roughly twice in 1980 to nearly five times the amounts in 1992 and 1994." In 1994, PAC's gave \$26.3 million to incumbents and \$4.9 million to challengers. There is something wrong there, Mr. Chairman. Incumbents do not have a—challengers do not have a level playing field. I want to repeat. There is no way that a challenger can have a level playing field with that kind of maldistribution of political action committee money.

Mr. Chairman, I don't believe that we are going to get a bill reported out of this committee. I believe that it is going to have to come probably on the floor of the Senate, as the gift ban did and some other reform legislation has. I am grateful for this hearing being held today because I believe that the American people want this kind of reform. They want to have greater confidence in the Congress, and they want to have greater confidence in the belief and knowledge that they have as much influence over legislation as special interests do here in Washington, DC, which they do not believe at the time.

I want to thank my colleagues who are here at the table and others in the Senate for all of us together working on this issue, and we will continue to work on it until there is some kind of decision made by the United States Senate. And I believe that that outcome is nearly inevitable if you do believe that as a representative government we represent the voice of our constituents, which overwhelmingly call for reform of a system which they believe is not only unfair but in some cases corrupt.

Thank you, Mr. Chairman.

Senator MCCONNELL. Thank you, Senator McCain.

Senator Feingold?

**TESTIMONY OF HON. RUSSELL D. FEINGOLD, A U.S.
SENATOR FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you very much, Mr. Chairman. I also want to thank Senator Warner and Senator Ford for making this hearing possible and providing us with this change to have this hearing on what I consider to be an issue of the very highest importance. I can't think of an issue that is of more importance than achieving campaign finance reform.

I want to also especially commend Senator John McCain for his leadership in putting together this bipartisan campaign finance reform effort. Without him, the growing and I think increasingly successful national drive for a bipartisan campaign finance reform would just be far, far less likely to succeed, and I have found working with him to be a great pleasure on this issue.

Mr. Chairman, in past years, campaign finance reform has been the rope in a partisan tug of war with each side refusing to give an inch and each side highly skeptical that a reform bill sponsored by one party could possibly be fair to the other party. What we have had is partisan bills that have wallowed in the legislative process while Members of Congress couldn't help but squabble over the intricacies of reform, such as PAC bans and soft money and public financing.

At one point, the road to reform seemed like a superhighway heading off into numerous directions. We could never find an end point because we never had a common starting point. But in recent months, debate over campaign finance reform has become much more focused.

As a few very notable Members of this Congress have asserted, unbelievably to me, but they have asserted that we need to spend more money—more money, not less—on congressional campaigns. As the Speaker of the other body publicly stated last November, he said one of the greatest myths in modern politics is that campaigns are too expensive. The political process, in fact, is not overfunded, but underfunded, the Speaker said.

Mr. Chairman, in 1994, the average winning Senate campaign spent \$4.6 million. This year the average winning candidate is likely to spend on average over \$5 million. I can only say that for the vast, vast majority of Americans, \$5 million is too expensive. In fact, what it does is put this institution completely out of their league.

Mr. Chairman, I also strongly disagree that voluntary spending limits would curb political participation. We have voluntary spending limits in our Presidential election system. It is, in fact, the lack of spending limits in congressional races that has stifled participation. Our failure to control campaign spending has turned our electoral system into a process in which issues and ideas have become purely secondary to the governing

question of American politics. And the governing question of American politics today is: How are you going to get the money?

In my long grass-roots campaign for the U.S. Senate, the question I was most often asked—in fact, usually the only question I was asked, is, “Russ, where are you going to get the money?”

If we conclude that increased spending is the key to increasing participation in our democratic process, Mr. Chairman, we automatically tilt the playing field toward those who have the money, and a lot of it. Our political system then is little more than a high-stakes poker game where usually only the wealthy and the powerful can afford to ante up and join the game.

Throughout our history, we have endeavored to pass laws providing greater access to our democratic process. We have, for example, passed the voting rights laws to extend rights to African Americans, to women, and eventually to all citizens over the age of 18. There is little question that we have made considerable progress in ensuring that Americans have reasonable access to the ballot box. Unfortunately, we have failed to ensure that qualified Americans have reasonable access to the ballot itself.

In recent years, the Congress has forsaken a basic precept that has always provided guidance to our Republic, and that is, that all people, regardless of race, class, and gender, not only have a right to participate in the democratic process, but that increasing such participation strengthens our Nation and enriches our society.

Instead, Mr. Chairman, we now have an electoral system that is almost exclusively tailored to the well-heeled and the well-connected. Who can really afford to raise and spend \$5 million to run for the Senate? A school teacher? A city council member? They would be automatic long shots based on the sole reason that they don't have access to big money.

The escalation in campaign spending has had much the same effect, Mr. Chairman, that the old poll taxes used to have. In both cases, the access to money became a defining factor in determining who was invited to participate in American democracy. With such a high entrance fee, it is not surprising that in many Senate races the choices for the voters are increasingly boiling down to an incumbent or a millionaire. It happened frequently in 1992 and 1994, in California, Connecticut, Massachusetts, North Carolina, Virginia, Tennessee, Texas, Ohio. And it happened just again in Oregon where we had an incumbent from the House versus a millionaire.

The evidence clearly demonstrates that those without access to millions of dollars are slowly but surely being squeezed out of the political process. In the 1994 House election, the average incumbent House members spent \$544,000 while the average challenger spent \$207,000. Incumbents outspent challengers by a

margin of over 2 to 1, and as expected, 90 percent of the House incumbents won re-election. The re-election rate in the Senate was even higher, Mr. Chairman.

The notion that we need to spend more money on campaigns is just not credible. The American people won't buy it, and I am convinced that a vast majority of the United States Senators don't buy it.

So what it comes to, Mr. Chairman, for those of us from different parties and of different ideologies who do see the problem as too much money, the question then becomes: How can we moderate our position and unite behind a single reform package? We certainly are not suffering from a shortage of ideas.

In the past, Republicans have supported reform that focused on the source of campaign contributions, such as placing limits on out-of-State contributions and banning political action committee contributions. The Democrats, myself included, pursued legislation that focused on limiting the overall amount of money spent and providing underfunded candidates the means to get their message out and their ideas out to the electorate. Of course, that legislation failed in the last Congress.

Yet these efforts have taught us two valuable lessons. First, if every Senator who supports campaign finance reform refuses to compromise and refuses to accept anything but a perfect bill, there just won't be any reform, and there will be a whole lot more money spent in the system. Second, if each political party continues to try and pass campaign reforms that do not carry significant support from the other party, there also will be no reform. And that is why I am so pleased that the legislation put forth by Senators McCain and Thompson and Wellstone and I and others provide a vehicle for bipartisan reform. It contains three essential elements that have already been outlined: voluntary limits on overall campaign spending; limits on the personal funds a candidate may contribute to their own campaign, and a requirement that candidates raise a majority of their campaign funds from their own home State.

The bill is comprehensive and, therefore, addresses other areas of our system that cry out for reform, such as soft money, PAC's, bundling, franking privileges, and the personal use of campaign funds. And, yes, Mr. Chairman, this bill is carefully crafted to be constitutional within the confines of the decision in *Buckley v. Valeo*, including Senator McCain's point that if it turns out that the PAC ban is unconstitutional, there are fall-back provisions having to do with the voluntary limitation on PAC spending so that a person can qualify for the benefit. So this is a constitutional bill, and I am extremely confident of that, although I know we will be revisiting that subject many times.

Mr. Chairman, we have crafted a reform bill that even in the eyes of its supporters and its authors is far from perfect. But it is a vehicle that can attract and has attracted a broad coalition of support. And it is not your run-of-the-mill coalition of support,

Mr. Chairman. The range of legislators and groups supporting this bipartisan and bicameral effort is really almost astounding: Common Cause, Ross Perot, President Clinton, Paul Tsongas, John McCain, Paul Wellstone, Linda Smith, Pat Schroeder, Bob Dornan, Charles Schumer, Fred Thompson, and Nancy Kassebaum, and dozens of major newspapers across the country. I am delighted to say that today our colleague, Senator Patty Murray, who also understands very well the difficulties of fighting big money in campaigns has joined us as yet another cosponsor of our legislation.

So, to conclude, thank you again for this hearing. I am hopeful that the Senate will take the time to consider campaign reform in the coming weeks and finally give the American people an opportunity to once again have some faith in their elected officials and to have a chance to trust their government and their institutions.

Senator MCCONNELL. Thank you, Senator Feingold.
Senator Thompson?

**TESTIMONY OF HON. FRED THOMPSON, A U.S.
SENATOR FROM THE STATE OF TENNESSEE**

Senator THOMPSON. Thank you, Mr. Chairman. Thanks to the committee. I will ask that my statement be made a part of the record.

Senator MCCONNELL. Without objection.

Senator THOMPSON. I won't read it so I can make a couple of comments that are personal to my own experience. I just came off a campaign, it seems like—getting ready to go back on another one. I have the unexpired term of Vice President Gore. I have seen it from the standpoint of a challenger who had not held political office before, and now I am looking at it from the standpoint of someone who is now an incumbent.

I have traveled the highways and byways of my State many times, and I can tell you that we don't need a poll in order to know that people are concerned about our political system. They are concerned about our political process. They have very little faith in the Congress of the United States, and that is a sad state of affairs.

Part of the reason for that is how we get elected, the amount of money it takes to get elected, the amount of time it takes us to raise the money to get elected. I also happen to think it has to do with the number of years that we choose to stay once we do get elected. But those are the things that concern the people who I talk with. It is a system that costs too much, takes too long to raise the money to run. It is a system that is more and more becoming one where, if you are not personally wealthy or a professional politician, there is no place in it for you. That is not good for the country.

It is a system that is geared heavily to incumbents, just the antithesis of the citizen legislature that many of us think we ought to move toward.

And to my Republican colleagues who seem to think that campaign finance reform is somewhat anti-Republican, I would simply point out that, in my opinion, first of all, this is something that has not been thought through sufficiently. I don't think that that is the case. I think that all of us agree that certain things are the public business. I cannot think of anything that is more rightly the public business than how we elect our public officials who pass the laws of this country.

For those who are concerned about conservatism, I cannot think of anything more conservative than trying to do the things necessary to preserve our fundamental system. And if we don't start engendering a little bit more confidence in the system we have got now, I don't think that we are going to have it forever. It permeates the rest of government, as far as I am concerned. We have got tough decisions to make in this country. We are seeing how difficult it is to take the first step toward a balanced budget. We all know that if we did everything perfectly for 7 years, we would still be facing probably a \$6 trillion debt at the end of that road.

Tough decisions in the fiscal area and other areas mean that we are going to have to deliver tough messages to the American people. It is not going to be easy these next few years in pointing out that we can't have things the same old way and expect to save this country.

But the messenger right now has no credibility. Until we as messengers have a little bit more credibility in delivering that message, the message is not going to get through and it is not going to be believed. And that is where we are, I think, today.

It is going to be a tough thing for many of us to deal with. Many of our colleagues don't want to move in this direction. Everybody is trying to figure out who it is going to benefit, who it is going to hurt. It has been my observation that nobody can ever figure those things out, anyway. It always works out differently than you think.

We can't be narrow any longer, Mr. Chairman, in looking at this problem in trying to figure out what our narrow interests are or be too influenced by this group or that group who have figured out exactly how it is going to affect them. I think we have got to step back away from it and realize that we have got to do something more fundamental.

Those of us who are pushing for reform, of course, are going to be called upon to unilaterally disarm in the process. So it is going to be difficult, but necessary.

I think the thing I like about the bill that we have proposed is that it deals with the area that I think is most fundamental, and it has to do with overall spending. We have diddled around in times past, some saying the limits should be \$1,000 for

individuals, some \$500, some \$2,000. I don't think that makes much difference. I think what makes the big difference is the overall amount of money that the process takes. I don't even think PAC's make that much difference one way or another.

I ran for office against a gentleman who did not take PAC money, and he got more special interest money from one industry than anybody else in the House of Representatives. He had been an incumbent for 10 years in the House, and it was published as such. So, you know, these narrow reform measures are not going to be panaceas. Political action committees, as we all know, was the great reform measure to come out of Watergate. So whether it is PAC's or some other special interest money or some form of bundling or what-not, I think that none of that is important in doing something about the tremendous amounts of money that it takes to run, what people have got to go through, and the time they have got to take to raise those amounts of money. The American people—the average person out there is seeing this process, and they are on to it, and they don't like it, and it has caused them to have less and less regard for the United States Congress.

So that is the reason that I am on board. That is the reason I think it is important in this country that we start moving in that direction, and I appreciate the opportunity of being able to be here with you today.

[The prepared statement of Senator Thompson follows:]

PREPARED STATEMENT OF HON. FRED THOMPSON, A U.S. SENATOR FROM
THE STATE OF TENNESSEE

Mr. Chairman, I, too, want to express my appreciation to you for convening these hearings on campaign finance reform.

A lot of people support campaign finance reform. And there are a lot of different ideas of what those reforms should look like. So I think the first question we have to ask ourselves is: What is wrong with the current system?

The most critical failing of our current system, in my opinion, is that much of the public is turned off by campaign financing and campaigns themselves. Many think the system reeks of special interests and favors bought and sold. This undoubtedly contributes to low voter turnout.

Second, money raising consumes an inordinate amount of office-holders' and candidates' time and effort. Candidates should be reaching out to as broad a spectrum of people and interests as possible, and not feel they must concentrate on those who can afford to make a donation.

Third, it is difficult for a challenger to raise sufficient funds to get his or her message out. Congress needs to move away from professionalism and more toward a citizen legislature. The process should be more open, instead of more closed. Because of the role money plays, unless a candidate has access to large sums of money, he or she is pretty much cut out of the process.

I believe the legislation I have joined my colleagues Senators McCain and Feingold in introducing provides some solutions to these problems. It doesn't provide all the solutions, or perfect solutions, but there are no perfect solutions in a democracy.

First, this legislation reduces the appearance and reality of special interests buying and selling political favors by prohibiting Federal PAC's, restricting contribution "bundling," restricting so-called "soft money," and putting a cap on out-of-State fundraising.

Terminating PAC's is no panacea, of course. My opponent in my Senate race took no PAC money, but he received more "special interest" money than any other candidate running. We need to remember that PAC's were established as a post-Watergate reform. They are nothing more than an association of people with common interests. But the public clearly has lost faith in them, and I believe that is the most important criteria in deciding whether they should stay or go.

Second, by limiting the amount candidates can spend, we will reduce the amount of time they need to devote to raising funds.

Third, a relatively minor provision in our legislation may have some major consequences. S. 1219 requires that campaign ads include an audio statement by the candidate that identifies the candidate and specifically states the approval of the candidate of the content of the ad. This should have a positive impact on the tone, accuracy, and fairness of campaign advertisements.

One specific issue I want to address is the one of whose ox is gored by campaign financing reform. We hear that this provision will hurt the Republicans, that will hurt the Democrats. This may sometimes be the case in the short run. But I submit that overall, the issue is less one of Republicans and Democrats and more one of incumbents vs. non-incumbents.

In 1994, 62 percent of PAC contributions went to Democrats and only 38 percent to Republicans. Labor PAC's gave two thirds of their dollars to incumbents; business PAC's on average gave 77 percent of their money to incumbents.

However, the percentage given by various interests to those challenging sitting incumbents ranged from 3 percent, by the defense industry, to 14 percent by both labor and miscellaneous business interests. Only the so-called ideological or single issue PAC's made a significant proportion—47 percent—of their donations to non-incumbents.

Now, the evidence is that the larger portion of PAC donations are going to Republicans, but again, it is incumbents who will receive the lion's share.

In conclusion, Mr. Chairman, I believe we must start doing everything we can to enhance the stature and the confidence that people have in the Congress. Otherwise, we are not going to be able to exert the leadership we need to in other legislative areas. Right now we've got feet of clay, and it makes the rest of the body politic weak. Until we do something about these fundamental parts of the political process, Congress is not going to have the strength to sustain itself when we make the tough decisions on fiscal matters, and other important areas such as welfare, tax reform, health care, and crime.

I thank the Chairman and the members of the Committee for their time and thoughtful considerations of these issues.

Senator MCCONNELL. Thanks, Senator Thompson.
Senator Wellstone?

TESTIMONY OF HON. PAUL WELLSTONE, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator WELLSTONE. Thank you, Mr. Chairman. I am going to be very brief. Even if you don't believe me, I am going to be very brief. I would like to thank my colleagues for all of their work, and I certainly would start with Senator McCain and Senator Feingold and also Senator Thompson.

I very much appreciated the comments of my colleague from Mississippi. I was listening carefully to what you said and found myself to be in complete agreement. And I won't go over again the sort of provisions of the bill. I guess I want to focus on trust, I want to focus on hope, and I want to focus on anger just for a moment.

I think we need to pass a significant campaign finance reform bill so that people will trust this process. And just building on

the words of my colleague from Tennessee, I think if people don't believe in the process, they tend not to believe in any of the outcomes. And I think it is just extremely important that we do something. All of us care fiercely about public service. That is why we are here. And I think this is critical, critical in order to really build trust that citizens need to have in a political process, that is key to a representative democracy.

I also think we need to renew some hope in people about the capacity of the Congress to address what people think are the really critical problems in our country. And I think a lot of people believe that the reason we are not able to do it is because of this mix of money and politics and the ways in which moneyed special interests dominate the political process. I think that is the ethical issue of our time, and I think that is the second reason why we must pass a strong campaign finance reform bill.

Then, finally, I think it is real important that we do this in order to channel—and I don't mean that in a manipulative way—the anger that people have. I think people feel downright ripped off by this political process. They don't feel well represented. They don't feel like this is a game that they are really getting a chance to play. And I think that anger can be channeled into a constructive, positive reform effort, and I think that is what this legislation represents. I just think that people see this as a money chase, and I think there is an appearance of corruption. I don't think that is a reality that goes along with that, and I think this is, therefore, the core issue.

Mr. Chairman, I really appreciate the chance to be here before the committee. I think we have—you know, we have waited some time. We are 14 months into this Congress. But I am still very confident that we can, in fact, take some action. And I will just simply echo the words of Senator Feingold. Personally, and it is an honest difference of opinion, I think those who have said that we need higher campaign contributions or more soft money, not less, I just don't think that is credible with people in the country. I don't think that is the direction that we should go in.

Mr. Chairman, let me just finish by saying I don't find this piece of legislation perfect. I think the \$250,000, as all of you know, for an individual contribution is too high. I think in an amendment that I passed before in the Senate it was \$25,000. The variable campaign limits if your opponent doesn't comply worry me. I hate to see those limits go up. But, boy, I mean, to go for some strict limits on spending, to in turn then have some *quid pro quo* in terms of free broadcast time and reduced postal rates and discounts on advertising, to really go after the bundling and to go after the PAC's, I don't think you can make a distinction between good PAC's and bad PAC's. I think all of us have got to give on this if we are serious about this reform.

To go after some of the use of franking privilege during the campaign year, et cetera, et cetera, I think just makes a tremendous amount of sense. We have got an opportunity like

we haven't had before. I think we should take action with an election prospect staring us in the face. Nothing like that kind of pressure to really get the incumbents—that is all of us, whether we are Democrats or Republicans, sometimes I think the system is just too wired for the incumbents, and it becomes more in's versus out's than Democrats versus Republicans. I think we want to have a level playing field. I think we really want to try and make some change. And I am very proud to be a part of this bipartisan effort. I hope we can do it through committee. I am anxious to bring this to the floor.

We were able to make some, I think, key changes on gift bans, on lobbying disclosure, and I think now this is the critical, critical leg to the table of reform. And I think we—I want to say I hope—I think we have to take action on this, this session.

The CHAIRMAN. Thank you, Senator.

We are going to ask Senator Bradley now to join his colleagues. Senator, would you bring up a chair?

Senator WELLSTONE. The Senator can take my chair. I have to go to the caucus.

The CHAIRMAN. Fine.

Senator WELLSTONE. And could I ask unanimous consent that my full statement be entered in the record?

The CHAIRMAN. Without objection. Thank you very much.

[The prepared statement of Senator Wellstone follows:]

PREPARED STATEMENT OF HON. PAUL WELLSTONE, A U.S. SENATOR FROM
THE STATE OF MINNESOTA

A FRESH, BIPARTISAN APPROACH TO CAMPAIGN FINANCE REFORM

Mr. Chairman, members of the Committee, thank you for inviting me to testify. I think this hearing is long overdue, and I'm glad it's being held now. I hope it signals a new-found willingness to move forward on campaign reform in this Congress.

Rather than talking at length about my own reform bill, or the bill I've cosponsored with Senators Feingold and McCain, I'd like to start by talking for a few minutes about some simple human realities that I think shape the often sterile and complex Congressional debates about campaign reform, but that are almost never mentioned in this context. I want to focus for a minute on trust . . . hope . . . and anger, because I think they serve as the backdrop for much of those debates.

Restoring Americans' trust in our political process.

Renewing their hope in the capacity of our political system to respond to our society's most basic problems and challenges.

And providing a channel for the anger that many Americans feel about the current system, in order to take advantage of a reform movement that's been building for years. Those are our duties. Let us keep them in mind as this debate moves forward.

We have been reading this week in The Washington Post about a major new Harvard/Kaiser Foundation/Post study that has confirmed what many of us in public life have heard in town meetings and cafes and at kitchen tables for years: that Americans are feeling out of touch with, and many have lost trust in, many of the major institutions in their lives—from the medical and legal professions, the judiciary, state and local governments, to major universities, churches and synagogues, the federal government, and especially to Congress.

As Members of Congress, most pressing for us should be the question of why so many people no longer trust the political process, especially here in Congress—and how we can restore that trust. Polls and studies continue to show a profound distrust of Congress, and of our process. Many Americans see the system as inherently corrupting, and have despaired of making any real changes because they figure special interests have the system permanently rigged.

I do not need to rehearse the many serious problems with our election financing system. Most of us are agreed on the bottom line: the system does not have—and has not had for many years—the confidence of the American people. People have lost faith and confidence in Congress as an institution, in the laws we pass, and at some level in our democratic system, because of the money chase and the appearance of corruption it gives.

Too often in our system, money determines political viability, it determines the issue agenda, and it determines to whom legislators are accountable: cash constituencies, not real constituencies. Most troubling, money often determines election outcomes.

I said it 5 years ago, when I was elected to the Senate, and I say it again. The central ethical issue of politics in our time is the dominance of governmental decision-making by monied special interests.

Our job is to restore public confidence by enacting genuine reform legislation that is fair to Democrats, Republicans and independents alike, which scales back special interest influence, sets spending and contribution limits, and levels the political playing field between challengers and incumbents by providing incentives—whether public funding, free media time, free postage, whatever—for candidates to participate in the system, just as we have done for many years in the Presidential system.

Other countries secure the integrity of their election process by using some mix of these devices, at relatively low cost. A study last summer by CRS concluded that of 19 countries surveyed, only one—Malaysia—did not provide far more extensive free media, tax deductions, or other direct or indirect public benefits to candidates and parties. In fact 15 of the 19 nations provided direct funding to candidates. 12 of them explicitly limited expenditures. Why not do that here? Why are we lagging so far behind other industrialized countries in preserving the integrity of our electoral system? Whether or not you agree with *Buckley v. Valeo*, a voluntary system of limits, carrots and sticks would be a reasonably low-cost, effective means of cleaning up the system.

If we are to enact real reform this year, how should we proceed? There are a couple of recent models.

Last year, Congress finally completed lobby disclosure and gift ban bills. After almost 3 years of pushing and pulling, finally we were able to stare down the gift horse in Congress—it became effective last month.

And under the new lobbying law, finally passed and signed into law by the President, the scope and nature of massive lobbying campaigns by special interests will finally have to be disclosed—a major step forward toward more open government.

We should use these bills as models of what we can do, on a bipartisan basis, to enact campaign finance reform. I know that even though they took almost 3 years to be enacted, these were easy compared to campaign finance.

I am not naive about the prospects. But neither am I despairing of our ability to craft a fair, bipartisan bill that goes at least part of the way toward comprehensive reform.

Enacting real reform should have been our first priority in this Congress. Instead, we have lost a lot of time in the last 14 months by the Majority's refusal in both Houses to even hold hearings on reform, and by continued attempts to block reform when we have tried to lock in time for Senate consideration.

In the House they've undertaken yet another "study" of the problem until later this Spring. Will almost certainly kill any chance at enacting reform, if they wait this long. Even when they act, Speaker Gingrich has suggested there's too little, not too much, money in politics—a proposition that sounds patently ridiculous outside the beltway bubble. Majority in House likely to go in direction of allow-

ing *more* interested money in politics, *higher* contribution limits, more soft money, not less.

By this time in the last Congress, House and Senate had acted on comprehensive reform bills in Committee and on the floor, and they were awaiting action by a House-Senate conference. Republicans filibustered reform to death in the last Congress, and have promised to try to do so again this year.

But not only Republicans are at fault—some foot-dragging in certain quarters of my party as well. President could have pushed harder for real reform, in keeping with his ringing challenge in his 1992 inaugural address “to give the capital back to the people to whom it belongs.” Some Democrats in Congress have sometimes been lukewarm about pushing ahead on reform.

Change is hard. It threatens the way things are. I know that. But real reform, which includes spending limits and bans certain of the worst abuses in the current system, is necessary. Americans have been demanding these changes for a decade, and they have a right to be angry that Congress has resisted them.

Frankly, I fear we have almost run out of time in this Congress. If we don’t act now, there is no chance of getting something enacted into law before the November elections. This election year offers a real political opportunity to get something done. There is nothing like a hanging—or in this case its political equivalent, an election year—to focus the attention of reform opponents on the costs of opposing reform.

In thinking about reform legislation, I start with the premise that political democracy has several basic requirements:

First, free and fair elections. It is hard to argue with a straight face that we have them now. That’s why people often stay away from polls, don’t participate in process. Incumbents outgun challengers 8 or 10 to 1, millionaires spend their fortunes to buy access to airwaves, special interests buy access—warps and distorts democratic process.

Second, the consent of the people. The people should be the source of all political power, and government should be their creation.

Third, political equality. Equal opportunity to participate in the processes of government. This means that the values and preferences of all citizens must be considered in the political debate—one person, one vote. People should count as one, and no more than one—a central democratic principle.

Each of these principles is undermined by our current system, funded largely through huge private contributions.

Over the years, I have introduced and re-introduced legislation, pushed amendments, organized my colleagues, given speeches, observed a self-imposed fundraising code stricter than current law, fought filibusters, and otherwise tried in every way I could to get tough, sweeping reform enacted into law. To no avail. To my great regret—maybe my greatest regret of my Senate career so far—campaign reform has been blocked by its opponents, stern defenders all of the status quo.

In testimony before this committee in 1993, I said that I thought we were at a critical historical juncture between the old regime and the new, between “auction block democracy” and a chance at genuine democratic renewal, between an outmoded campaign finance system gone dangerously awry and what I hope will be a major overhaul of that system. I still believe that, and even though we have been frustrated thus far, ultimately Americans’ demand for reform will win out over the power of entrenched special interest who have for so long resisted real change.

People believe that the unfair ways in which we now distribute benefits and burdens in this society through our social policy have a lot to do with the fact that special interests rule the roost here. They see that huge amounts of special interest money have real legislative and electoral consequences. They distort our process of representative government—and they don’t like it one bit.

Too many Americans believe that small but wealthy and powerful elites control the levers of government through a political process which rewards large givers—a system in which you have to pay to play. Why do you think corporate welfare has barely been nicked in the current deficit reduction talks, while health care for poor children and our elderly in nursing homes has gotten whacked? The

not-so-invisible hand of corporate PAC's, well-heeled corporate lobbyists, huge corporate soft money contributions can be seen most brazenly here.

They see our failures. . .

- to remediate harsh, grinding poverty, especially in our inner cities,
- to stabilize and protect the middle class,
- to reduce widening gulf between rich and poor,
- to combat homelessness, addiction to drugs, decaying roads and bridges, high unemployment, rising health care costs, unequal system of education, and other problems.

And they want to know why we can't, or won't, address these problems head-on. Even in an age of smaller, leaner government, these are fundamental social and economic ills which government can play a key role in helping to solve. But government has not in recent years been able—or willing—to solve these problems.

Americans know that without real reform, attempts to restructure America's health care system, create jobs and rebuild our cities, reduce defense spending, protect our environment, make our tax system fairer and more progressive, fashion an energy policy that relies more on conservation and renewables, and solve other pressing problems will remain frustrated by the pressures of special interest, big-money politics.

And it is not, as so many have argued in recent years, that we can't address these problems because government is broke. It's at least partly because we are spending too much money on the wrong things—to support various special interest agendas, to pay for corporate welfare, to pay military contractors for obsolete weapons systems conceived and ordered during the Cold War, and which have stayed on automatic pilot since its end.

A NEW HISTORICAL CONTEXT

Campaign spending is not a new problem, but it has exploded since the 1980's:

- in 1980, expenditures on Congressional campaigns was \$248 million;
- in 1990, \$471 million;
- last year, according to the FEC, over \$720 million!!

Or consider the average cost of Congressional campaigns. In '94, the average cost of a Senate campaign rose to \$4.3 million; up from \$3.6 million in 1992. The average cost of a House campaign was over half a million dollars.

And despite best efforts to make sure fundraising is broad-based, and includes small contributors, virtually all large donors—who give the bulk of this funding—represent social and political elites. A couple of years ago a study by Citizen Action, after running FEC data on contributors through their computers and attempting to match identical or nearly identical names, concluded that about one-tenth of one percent of the voting age population accounted for one-third of the total money spent by federal candidates.

Even if this number were overstated by a factor of three, it would still be an alarming indicator of the degree to which candidates have become dependent on economic elites.

In the same study, one twentieth of one percent of the Voting Age Population accounted for all the large donor money received by Senate candidates;

Large donors representing business interests gave vastly more than the amount given to congressional candidates by labor interests—some studies have concluded that the high flyers outgun working people here by about 20 to 1.

I think this helps to illustrate the problem of who's being represented in the current system, and who is shut out.

Real campaign reform would restore level playing field, open up federal candidacies to all citizens, end the perpetual money chase for members of Congress, and end the campaign "arms race."

My bill provides substantial public funding in both the primary and the general elections, after candidates meet certain threshold tests. It provides for strict, formula-based limits, a PAC ban, a ban on bundling, 90 minutes of free airtime for candidates, free postage, contingent funding and a flexible limit for those who face non-participating candidates, a soft money ban—all of the central elements of comprehensive reform. But I am convinced that the only way to get bipartisan

support for real reform in this Congress is to do push forward with a fresh new bipartisan approach.

That's what we ought to fight for, and that's why I have been working with Russ Feingold, John McCain and others, to fashion a rump group bill that offers the framework for a bipartisan solution this year. A similar bill has been put forward in the House by David Minge, Linda Smith and others. It has bipartisan support, and solid support from outside independent groups including the Perot organization and others.

This is not my ideal bill. It is not perfect. In fact, I oppose certain elements of it, and will try to amend it along the way. But some on both sides have made real concessions to get it this far, and there is still much work to be done on it. I hope it will provide a vehicle for real, bipartisan reform efforts this year. It does provide many of the central elements of any significant reform plan. Its enactment would go a long way toward restoring integrity to our political process.

For that to happen, each side will have to consider giving up certain advantages that many believe the current system now offers. Americans are looking for that kind of cooperation and compromise on political reform. They believe it's long overdue.

Perhaps most important, it would impose strict limits on the amounts that candidates could spend in their campaigns. That is critical if we are to address the huge amount of big money that pours into campaigns, often from well-heeled special interests. As with my bill, and others, the formula would be based on the voting age population in each state. Candidates who agree to abide by the limit would receive free broadcast time, reduced postage rates, and broadcast discounts as incentives for them to participate.

It also contains tough new provisions to ban special interests from "bundling" contributions, bans contributions from Political Action Committees (with back-up limits should the ban be found unconstitutional by the courts), bans incumbent use of taxpayer-paid mass mailings in an election year, imposes tough new limits on so-called "soft money" contributions that can be used to circumvent federal financing rules, and prohibits the personal use of campaign funds.

Finally, it places a premium on contributions from a member's own home state, in an effort to ensure that Senators are more accountable to those who elected them than to big-money special interests. It requires that a substantial majority of funds come from one's state, and that would be another big step toward reform. While it is true that this specific provision has often been seen historically as being harder on Democrats than Republicans, I believe this is an important principle that should be preserved in some form as this bill moves forward.

As I have said, there are some real problems with this bill, and both of its primary sponsors have acknowledged that. The \$250,000 limit an individual can spend on his own campaign is too high, the variable contribution limit for candidates with non-participating opponents is a mistake, and there are other problems that we'll be working to resolve. But whatever the final scheme, the bill must encourage, rather than discourage, participation in the system. And it must be real.

While this measure is not as comprehensive as earlier versions of campaign legislation which I have authored or supported in the past, it would go a very long way toward real reform. I think that as the bill moves forward, it can be improved upon, and I intend to work to do that. But I commend Senators Feingold and McCain for their effort, and I hope the bill will provide a bipartisan basis for the major overhaul of the campaign finance system which has eluded us for so many years.

SUMMARY OF WELLSTONE SENATE FAIR ELECTIONS AND GRASSROOTS DEMOCRACY ACT

Contribution Limits

- *Political Action Committees*—prohibited from making contributions or expenditures to influence federal elections. If ban declared unconstitutional: (1) lowers PAC contribution limit to \$250 per candidate, and (2) imposes aggregate PAC receipts limit on Senate candidates.

- *Individual Contribution Limits*—lowered to \$100 for donations to Senate candidates, per election cycle.

Voluntary Campaign Expenditure Limits

- General election period: Formula-based, from \$775,000 (small states) to \$4.5 million (large states).
- Primary election period: 67 percent of general election limit (\$2.5 million max.)
- Runoff election: 20 percent of general election limit.
- Candidate's personal funds limit: \$25,000
- Limits increased if opponent raises or spends more than 200 percent of general election limit.

Benefits for Candidates Abiding by Voluntary Expenditure Limits

- *Public funding* —Primary (and Runoff): match for individual in-state donations of \$100 or less, up to 50 percent of spending limit;

General: Major party candidates given subsidy equal to spending limit;

Minor party candidates: provided match for individual in-state donations of \$100 or less, up to 50 percent of spending limit;

Contingent funding: payments to participating candidates to compensate for and in amount of (1) opponents' expenditures in excess of spending limit, and (2) independent expenditures made against participant or for opponent;

- *Free Broadcast Time*—broadcasters must provide 90 minutes of prime access time to eligible candidates within broadcast area, in segments of at least 1 minute, with no more than 15 minutes within a 24-hour period and no more than 25 percent of a broadcast consisting of other than candidate remarks.
- *Reduced Postal Rate*—One mailing per eligible voter during general election period, at lowest non-profit third-class rate.
- Eligibility threshold for benefits—candidate must raise 5 percent of general election limit in amounts of \$100 or less (at least 60 percent within-state).
- Funding source—appropriated funds, financed by increase in dollar checkoff to \$5 and elimination of tax deduction for lobbying.

Soft Money

- Prohibits all "soft" money in federal elections; requires that all federal election expenditures be from sources allowed by federal law.
- Establishes Grassroots Federal Election Fund to be maintained by state political parties for grassroots political activities that benefit federal candidates exclusively. Contributions to these funds must be raised and disclosed under federal limits, and may not exceed \$5000.

Bundling

- Prohibits bundling by all PAC's; parties; unions, corporations, trade associations, and national banks; partnerships or sole proprietorships; and lobbyists.
- Prohibits lobbyists from contributing funds to, or soliciting funds for Members of Congress if they have lobbied those Members or their staff within the last 12 months.

Independent Expenditures

- Tightens definition to ensure proper distance from candidates; augments disclosure and disclaimer requirements.

The CHAIRMAN. I regret I was not here at the opening this morning. I had the privilege of attending the National Prayer Breakfast, which is an annual event here. And I encourage those who were not able to attend to read some of the remarks this morning. They were, indeed, very appropriate.

[The prepared statement of Senator Warner follows:]

OPENING STATEMENT OF HON. JOHN WARNER, CHAIRMAN, A U.S.
SENATOR FROM THE STATE OF VIRGINIA

Good morning. Today the Committee is holding the first Senate hearing of this second session of the 104th Congress on the general subject of campaign finance reform. We anticipate that there will be several more. Campaign financing is a concern to many Americans, and the Senate is obligated to join in the examination and full discussion of this important issue. Further, we have four bills addressing campaign finance reform which are now at this Committee.

It is our sincerest hope that these hearings, along with the ongoing efforts of the private sector and educational institutions across our Nation, will help to inform all of us on the costs and ramifications, favorable and unfavorable, of the possible legislative actions that might be taken.

Today our hearing will have three segments. We will start with testimony from some of the sponsors of the campaign finance bills that have been referred to this committee: Senators McCain, Feingold, Thompson, and Wellstone who are some of the sponsors of S. 1219; Senator Feinstein, who is sponsoring S. 1389; and Senator Bradley who has sponsored S. 1528. I note that Senator Feingold has also sponsored S. 46.

Our second panel will generally address the constitutional issues that arise from efforts to restrict campaign finance fund-raising and expenditures. AND our third panel will include differing points of view on the need for campaign finance reform and the type of reform that might be best for our Nation.

Future hearings will focus on some of the other issues, such as taxpayer financing, "soft money", and the concept of free or reduced-fee broadcast time and postal service. We will also hear from various citizen groups regarding the potential impact the various campaign finance reform proposals might have on grassroots efforts to organize support for particular issues.

The CHAIRMAN. Senator Bradley?

TESTIMONY OF HON. BILL BRADLEY, A U.S. SENATOR
FROM THE STATE OF NEW JERSEY

Senator BRADLEY. Mr. Chairman, I thank you very much, and I will do that. I will get those remarks and I will read them, and I thank you very much for—

The CHAIRMAN. Well, Senator Bradley, the President spoke, Senator Simpson, and Senator Nunn I think gave one of the finest sets of remarks he has ever given in his entire public life.

Senator BRADLEY. I am quite serious.

The CHAIRMAN. Yes, I know you are.

Senator BRADLEY. And I thank you very much for the opportunity to testify. I thank you for holding the hearings so early in the year and inviting all of us to come and testify about money in politics and about our own proposals for reform. I also—

The CHAIRMAN. If I might say, the colleagues on both sides of the aisle here on this committee were very anxious to have the hearing. And, indeed, those who are sponsoring legislation appearing on this first panel were instrumental in making possible this hearing at the early date.

Senator BRADLEY. Mr. Chairman, I also want to acknowledge the work of my colleagues here at the table in building some

support in Washington for proposals to operate within what I call the prevailing assumptions about what can and can't be done to reform campaign finance.

But what I would like to suggest is that we look at the issue from a much broader perspective. The role of money in politics is just not the technical problem called campaign finance reform. But it lies at the heart of, I think, the current failure of American democracy to address the economic anxiety facing most American families.

To free democracy from the power of money, I believe we have to confront Washington's old assumptions and outdated constraints and look at what is happening in the States across this country, where people are uniting behind bold and serious reform, and I think they expect the same from us.

All of us who serve here must recognize that American democracy is paralyzed, and the budget stalemate is only the latest headline. The Federal Government has not been able to act decisively with public consensus behind it in years on issues of health care, on taxes, creating good-paying jobs, lifetime education. We have been in a continual deadlock.

Meanwhile, for Americans who are not wealthy, the idea that working hard can lead to a secure future is frankly slipping away. The heavy footsteps of downsizing, relocation, part-time jobs, temp jobs, middle age without health care, retirement without pension, those footsteps may still be distant, but they are heard in every family and in every home.

The political process seems deaf to the anxieties, frankly, of most Americans. Democracy is paralyzed in part because we have lost the trust of citizens who believe that politicians are controlled, that we are controlled, that we are controlled by special interests who give us money, by parties that crush our independence, by ambition for higher office that makes us hedge our positions rather than call it like it is and like we really see it, and by pollsters who convince us that the only thing that can allow us to win a campaign are focus group phases.

Voters distrust government deeply and consistently, and they do so much that they are not willing to accept the results of virtually any decisions made by the political process. That is how serious I think it is.

But I think there is more than simply the perception that democracy has slipped out of control. Consider that one corporation gave over half a million dollars to politicians and won a special deal in the telecommunications legislation allowing it to buy up burglar and fire alarm companies. Or another company that gave almost a million dollars won endorsement of a costly insurance product that only that company offers as a centerpiece for a major congressional Medicare plan.

So the story becomes clear, and I believe we should all think about this. Economic anxiety eats away at people who work in

America. Government fails to and refuses to respond. Voters develop profound and unyielding mistrust of the legislative process. And legislators too often surrender their consciences to the corporate lobbyists or big contributors with narrow interests to protect.

We would like it not to be that way, but too often it is.

Our Nation's history, I think, demonstrates that the conduct of democracy is not an abstraction. When politics becomes hostage to money, as it did in the late 19th century and as it increasingly is today, people suffer. Neither economic opportunity nor economic security is given the place it deserves in our national ambitions. There is still a very tangible relationship between the level of opportunity and security available to every American family and the extent to which we can keep our democracy secure and separate from the force of money.

Money not only determines who is elected, but it determines who runs for office. Ultimately it determines what government accomplishes or fails to accomplish.

Under the current system, Congress will too often listen to the 900,000 Americans who have contributed more than \$200 to campaigns and not frequently enough listen to the 259,600,000 Americans who did not contribute more than \$200 to political campaigns.

Mr. Chairman, I think there are three serious misconceptions that have prevented us from breaking the connection between money and politics. First, the misconception is constitutional. The Supreme Court in 1976 in the case of *Buckley v. Valeo* held that a rich man's wallet is no different than a poor man's soapbox. Restrictions on total campaign spending and on wealthy individuals using their own money to buy an office were held to be equivalent to restrictions on free speech. First misconception.

The second misconception is similar, but runs deeper. It is rooted in a failure to understand that democracy and capitalism are separate parts of the American dream and that keeping that dream alive depends on keeping one from corrupting the other.

The third misconception is that different sources of money in politics are more or less corrupting than other sources. When we write what we call campaign finance reform, we too often try to protect our own sources of funding while cutting off those sources that primarily go to our opponents. Thus, the endless hair splitting between political action committees, individual contributors, personal wealth of candidates, soft money, independent expenditures and so on and so on. Some proposals even draw distinctions among various types of political action committees, banning some and protecting others. The result has been legislative proposals that tiptoe around actually limiting spending on campaigns, that don't challenge the idea that money

should decide elections, and that draw endless distinctions among different kinds of money.

If any of these proposals became law, they might make some difference. But the biggest problem with all of this tortured hair splitting and incrementalism is that the voters don't understand them. So to oppose them has no downside whatsoever.

To free our democracy from the power of money, I believe we have to start with two straightforward principles. First, money is not speech. A rich man's wallet does not merit the same protection as a poor man's soapbox.

Second, all interested money in politics is potentially corrupting, whether it comes from an individual, a PAC, a candidate's own investments. It sometimes comes with strings attached, and limiting one source will only open up others. In other words, Mr. Chairman, money in politics is a little bit like ants in your kitchen. You either got to keep them all out, keep all the holes out, block all the holes, or some of them are going to find a way in.

So, Mr. Chairman, I would start by amending the Constitution simply to clarify that political money is not speech. I have introduced a constitutional amendment which will be referred to another committee that would give Congress explicit authority to limit spending in campaigns and contributions from any sources. Such an amendment would be an essential underpinning, I think, to any real reform. This would be achieved, obviously, as well if the court reconsidered *Buckley v. Valeo*.

Now, with the constitutional amendment out of the way, I would give the citizens of each State direct control over how much money would be spent in their State's elections. I would say that each taxpayer in each State would have the opportunity to give between \$1,000 and \$5,000 per year, but only to a campaign in that State. You would contribute to a campaign by adding that contribution to your tax liability over and above what you owe to the government and sending it in with your tax return. But all the money that would be voluntarily contributed to this fund would be shared on Labor Day or the day after the primary and divided equally the candidates, Republican, Democrat, and/or qualified independent.

Outside of that money from the common fund, Senate candidates could not raise or spend any money from PAC's, individual donors, parties, their own pocketbooks, whatever.

If the voters and taxpayers concluded that they liked the level of information and advertising that they would be getting with a \$20 million campaign, they could choose that kind of campaign. If they wanted a cheaper campaign, they could choose that option by their votes, by how much money they sent to the common fund. It would then be a battle of ideas, which idea equally funded would prevail.

To ensure that all candidates have an opportunity, an equal opportunity to reach all voters, I would also reclaim the public airwaves for public forum. Every broadcast licensee, radio and television, would be required as a condition of licensing to provide 2 hours of free time to every candidate, 1 hour in prime time, in units of at least 1 minute. The airwaves are public property, and they now offer the closest thing to a shared culture and a common forum for the discussion of ideas, and that forum should not be available only to the highest bidder.

We have not only a right to insist that broadcasters provide the space, but a responsibility to ensure that the public's air space is used in the interest of rebuilding democracy.

Any party that has received 10 percent of the vote in the previous two Senate elections would automatically qualify for funds from the common fund. Independent candidates or new parties would be required to obtain signatures of 5 percent of all eligible voters in the State. But once they qualified, the candidates and their ideas would be treated equally.

The candidate who refused to participate in at least one debate would be completely shut out of the common fund and couldn't participate and receive any money.

Well, what about the primaries? Well, in the primaries, no candidate would receive any money from the common fund, simply a general election fund. Nor would they receive free broadcasting. But they would be permitted to raise funds. But they would be required to raise 100 percent of their funds in \$100 or less.

So, Mr. Chairman, that is it. For the general election, there would be no PAC's, no private contributions from wealthy individuals, no bundling of contributions from executives of a company to evade PAC limits, no money from out of State, no candidates using their own wealth, no refusal to debate, and all sources of potential corruption in the current system would be cut out.

Senator MCCONNELL. No newspaper endorsements either?

Senator BRADLEY. Well, sure, your friends could endorse you. Speech would be protected. Money would be restricted.

Now, the proposal, I am sure—as I can tell—won't sound like anything that we have really heard before. It would probably take people a little while to get used to it. Some people worry there won't be enough money for a good campaign. Some will say it is an incumbent protection act. But if that is so, that there won't be enough money for a good campaign, the people would be less informed. But that will be their choice. They will have made that choice. No longer will the special interests control it.

Mr. Chairman, I believe there is a deep hunger for this kind of reform. I have been very impressed, for example, by the activism at the State level across this country that are using one breakthrough, one of the progressive breakthroughs of the early 20th century, initiative and referendum, to break down the

barriers to the one progressive reform, the others being direct election of Senators and universal suffrage, the fourth being campaign finance, the one, campaign finance, that was never enacted. Teddy Roosevelt, when he came to office offended by the election of 1896, put campaign finance reform at the top of the agenda. Never happened.

Many of those activists in States are here today. I will be meeting with them, hearing what they are doing, and seeing if we can't work together. And if this committee were to compare what these groups are doing with what we are thinking about here, under the old paradigm and the old constraints, I think that we would frankly be blown away by our timidity.

Never before have we seen so much grass-roots activity on the issue of campaign finance reform. In 1994, ballot initiatives won in Missouri, Oregon, Montana, as well as in the District of Columbia in 1992. And so far we can expect the 1996 initiatives in Maine, California, Alaska, Arkansas, and Colorado, and maybe more by the time of election.

The initiatives on the ballot this year are radical and serious. Whether they emphasize modest public funding, limiting contributions to \$500 or to \$100, they are big, uncompromised reforms that would go a long way toward freeing State legislators from the grip of moneyed interests. I consider those State activists as actually partners in the journey toward a better reformed system. And I believe they deserve to have a proposal on the table in Washington that is as radical and as serious and as real as what people are talking about in the States.

So, Mr. Chairman, what is the worst consequence here? The worst consequence if this proposal were enacted would be a resurgence of door-to-door campaigning, of politicians listening instead of polling, and of campaigns led by candidates and their ideas rather than consultants and their focus group phrases.

At best, however, I believe that giving voters control over campaign finance will be enough to return democracy to the people, freeing it from the power of money. It could restore confidence and faith and legitimacy of the democratic decision-making, freeing both Congress and the Presidency from the cycle of gridlock, action, and backlash. Ultimately, I think it will free our democracy to do what it can do when it works well, and that is to use the power of government to build a structure of economic security and economic opportunity for all American families.

I thank you very much for the opportunity to testify.

The CHAIRMAN. Thank you very much, Senator Bradley.

We will now have a question period, and I would first like to thank my colleague, Senator McConnell, for opening the hearing this morning while I was attending the prayer breakfast. Senator McConnell has devoted much of his distinguished career in the Senate—

Senator BRADLEY. Mr. Chairman, if I could, I am sorry to drop this bombshell on you and then leave, but I am supposed to do my broadcast to the citizens of New Jersey at 11:00 a.m. And so I need to get over to the TV studio. I would be pleased to come back in the afternoon.

The CHAIRMAN. We have seen you have many dropped shots, Senator. You are free to go.

Senator BRADLEY. Thank you very much.

The CHAIRMAN. Senator McConnell, I would like—

Senator MCCONNELL. I am not sure I like the way this testimony is shaping up here.

[Laughter.]

The CHAIRMAN. I would like to invite you to lead off with the questions.

Senator MCCONNELL. I am sorry Senator Bradley left. I am sure he would agree with my assessment of his proposal, because he said it himself. It is truly radical. It would give the government total control of political speech. And so that will be a very interesting debate to behold as we move forward with this subject.

Of course, it wouldn't keep from transferring the power of political speech elsewhere. It wouldn't keep newspapers from endorsing. It wouldn't keep reporters from doing investigative reports. And that is, of course, what always happens when you have spending limits. It is sort of like putting a rock on Jello. The speech goes in a different direction. So I am sorry Bill had to leave, but we will talk about that another day.

I really only have one question for Senator Thompson. I noticed in today's Washington Times—you may have seen this, too, Fred—there was a report of Tuesday's election in Oregon by a fellow named Marshall Whitman. It says, "The pro-Wyden effort provides a glimpse of big labor's plans for the 1996 elections. The AFL-CIO recently announced a plan to spend more than \$35 million this year, seven times the usual amount on electioneering. Unfortunately, many of these activities will be financed involuntarily by rank-and-file union members who may disagree with the agenda of the big labor bosses. The Republican and Democratic unionists alike are compelled to pay dues to the labor bosses. These dues are then used to pay for political activities." This is the *Beck* decision, which we have tried on a number of occasions to implement and have been unsuccessful.

Further in the article, it says, "The just completed special election in Oregon to fill the seat of former Senator Packwood provided the new leaders a chance to flex their partisan muscles. According to an AFL-CIO document, there were more than 25 union activists, 12 from the AFL-CIO alone, who devoted full-time to the efforts to elect Senator-to-be Wyden. Political Director Rosenthal bragged, 'We're mailing endorsement pieces to 75,000 union members and persuasion pieces to an estimated

40,000.' The AFL-CIO newsletter noted that another 100,000 flyers comparing the candidates' records are being produced and phone banks have been set up across the State. The AFL-CIO did not act alone, however. By joining forces with at least 11 other unions, labor was able to mount a considerable presence in this race," and on it goes.

According to the Republican National Committee, S. 1219 has no impact on that kind of political activity, and I noticed in your testimony you said the most important thing was overall spending limits. Given the influence of groups that are not impacted by this legislation, plus the considerable impact, for example, of a newspaper endorsement, how do you reach the conclusion that you have, in fact, leveled the playing field by seeking to control one kind of speech and leaving other kinds of speech untouched?

Senator THOMPSON. Well, I think, first of all, that you have to keep in mind that what you just described is under the current system. And you and I probably would agree that that situation is not exactly as it should be.

I am greatly concerned about what you are talking about. I am concerned about it in a slightly different vein, when I read about compulsory union dues going to put on general political advertisements with regard to this whole balanced budget debate and doing what I consider to be massive distortions of facts with regard to Medicare and things of that nature, which brings into question the whole soft money component, you know, of what we are trying to do.

I have concerns about that. I am not sure that what we have got with regard to that sufficiently answers that question. I think what we have done here is put a proposal on the table that tries to level the playing field, and basically, although you point out that problem, the bigger problem is one of incumbents versus non-incumbents, as far as I am concerned. All this talk about the First Amendment, which obviously we are all concerned with, it all comes down to—the First Amendment is always exercised for the benefit of those in power. People choose to exercise their First Amendment rights toward contributing to those who are already in office, whether it is Democrat or Republican, whether it is—no matter what kind of business group you are talking about, or any other group, you know. And I think that is the real problem that we are trying to address, and as I pointed out, there are some other parts of it that I think are more symbolic than anything else. I think the PAC situation could fall into that category.

So I think it is important to put a substantial proposal on the table that basically attempts to limit the overall moneys that are involved which take up practically all of our time in certain portions of the year, and the point that you make and other points that have been made are certainly valid and need to be explored and addressed. And I think that is one of the reasons why it is so important to have hearings like this.

Senator MCCONNELL. I don't have any other questions.

The CHAIRMAN. Thank you very much. I am just going to, Senator, make a few remarks, because I am very anxious to move to the second panel. Therefore, I will put in the record my complete opening statement, and I will have certain written questions directed to the members of the panel. Again, I thank you, Senator, for opening the hearing while I was at the prayer breakfast. And I just want to say as chairman, I want to make it very clear that this committee will have a series of hearings on this very important subject. And to the extent that we can find the time, we will give the widest possible latitude to the numbers of people desiring to come forward and to try and achieve a balance between their respective views on this extremely important issue.

But recognizing that any Senate committee and the Senate as a whole has a certain limitation on the time it can devote to a subject, no matter how important that subject may be, I strongly encourage the private sector, particularly the educational sector, and right down to the town meetings all across America to actively participate in this debate in the coming months. I cannot predict what the Senate will or will not do, or the House, for that matter. But there is, indeed, a growing interest, and as a consequence of that interest, it is most likely that the Congress will in some way state its views, I would say, within the next 6 to 8 months.

Therefore, let us encourage the debate on the village greens and in the courthouses and town halls all across this country, and let that debate work its way up such that the national media devote as much time as they can to this issue.

So I thank you very much, Senator, for your contribution.

Senator THOMPSON. Mr. Chairman, I think it is vitally important what you just said, and you are certainly to be commended for kicking off that debate, as it were. Thank you very much.

The CHAIRMAN. Well, my greatest concern, however, is the fundamental principle which I feel very strongly about on this issue, and that is taxpayer funding of public elections. We are not observing what I would regard as a successful program as it relates to the Presidency. We see a continuing decline of participation, and I think those that want to anchor this legislation on that concept do so with a dangerous weight. That is my own view at this time.

I am going to try and keep as open a mind as I can on all other aspects, but on that one, I have grave concern. Do you have views on that, Senator? I know you have researched these issues.

Senator THOMPSON. I share your concern with public financing. That is why we have submitted the bill that we have.

The CHAIRMAN. Yes, I judged that.

Senator THOMPSON. We do not have public financing as a part of our approach. People have great concern about so-called

welfare for politicians, and I think rightfully so. I think we ultimately have to raise the question of whether or not if that is the only alternative to the current system, I think a lot of people have to take a different look at it. But I don't think that is the only alternative, and that is why we are struggling to bring all these various concerns and interests and so forth under one umbrella for fundamental reform without it at this stage.

The CHAIRMAN. Well, as a part of these hearings, we will address the issue of the Presidential elections and how this concept of the check-off for public contribution has or has not worked and receive a balanced set of views on that.

Thank you very much, Senator.

Senator THOMPSON. Thank you.

The CHAIRMAN. We will now turn to Robert O'Neil, the Director of the Thomas Jefferson Center for the Protection of Free Expression, Charlottesville, Virginia, associated with the University of Virginia, and, I might note, a former distinguished president of the school which I was privileged to attend. Mr. President, we welcome you.

We have Archibald Cox, Carl Loeb Emeritus Professor, Harvard Law School, and Joel M. Gora, Professor of Law, Associate Dean of Academic Affairs of Brooklyn Law School.

I ask unanimous consent that we include in the record at an appropriate place a statement by the distinguished Senator from Rhode Island, Senator Claiborne Pell.

President O'Neil, would you kindly lead off for your panel?

TESTIMONY OF A PANEL CONSISTING OF ROBERT M. O'NEIL, DIRECTOR, THOMAS JEFFERSON CENTER FOR THE PROTECTION OF FREE EXPRESSION, CHARLOTTESVILLE, VA; ARCHIBALD COX, CARL M. LOEB EMERITUS PROFESSOR, HARVARD LAW SCHOOL, CAMBRIDGE, MA; AND JOEL M. GORA, PROFESSOR OF LAW, ASSOCIATE DEAN OF ACADEMIC AFFAIRS, BROOKLYN LAW SCHOOL, BROOKLYN, NY, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. O'NEIL. I'm happy to do so, Mr. Chairman, and very grateful for the chance to be with you today. Since I do come from Charlottesville and from a center that bears Thomas Jefferson's name, I keep wishing that I could start by revealing some great insight Mr. Jefferson had on the subject of campaign finance reform. Regrettably, I find none and, therefore, start with a very brief personal note.

The CHAIRMAN. Well, I judge that you researched it thoroughly, though.

Mr. O'NEIL. We have tried.

The CHAIRMAN. Others need not try and go back.

Mr. O'NEIL. There are still undiscovered Jeffersonian quotations, and we will keep looking. But so far, nothing found.

Senator MCCONNELL. We know how George Washington felt about it, by the way. There is recorded evidence that he was handing out whisky to voters in one of his elections for the House of Burgesses. So there was some distribution, shall we say, of emoluments of some sort to voters in those days.

Mr. O'NEIL. In a slightly different medium, but the sentiment and the problem are there.

Let me just open this brief statement with a personal comment as a citizen and a voter. I find a great deal of merit in the concept of regulating campaign and candidate expenditures. I am here, however, as somebody who follows the First Amendment, and in that capacity, I must say I do have grave doubt whether the Supreme Court is ready now or in the foreseeable future to reverse the position it has taken and to approve the constitutionality of direct expenditure limits.

Let me explain, if I may, focusing just on that one issue among the many that S. 1219 raises.

The case advanced for a change in this constitutional view seems to reflect four elements: different circumstances, a new rationale or interest, a more flexible, arguably voluntary, system, and perhaps simply a more receptive Supreme Court. That case has been fully developed in a number of Law Review articles. Let me address each element very briefly.

First, there is no doubt that the realities of campaigning and campaign finance have changed since Watergate. But those changes seem to me to be more in degree than in kind. Current conditions aren't so different from the seventies that one could fairly say the Supreme Court was unaware back then of what would be the campaign realities of the nineties. Moreover, the most significant change involves the use of personal wealth, the Perot factor, now the Forbes factor, and that is probably the clearest case of constitutionally protected expression. So there has been change, but not change of so basic a nature as to warrant a constitutional revolution.

Second, a different regulatory interest—it is styled as protecting candidates' time and energy—now seems to be the most appealing one advanced in support of expenditure limits. That surely is somewhat different from the goals or interests that were rejected in *Buckley v. Valeo*. On the other hand, the *Buckley* Court was not unaware of the concern about candidate time and energy. Different interests, if asserted today, I am sure would get a fair hearing. But I am much less sure that asserting the need to protect candidates' time would change the basic First Amendment equation. Moreover, if that were the asserted interest, it seems to me it would have to be documented quite substantially and in detail at both the legislative and the judicial—

Senator MCCONNELL. Could I interject on that point, just to reinforce what you said? That is, of course—that assertion that candidates are spending all their time raising money is, of

course, demonstrably false. We have looked at the Senate records, and 80 percent of the money raised by Senators was raised in the last 2 years of the 6-year cycle. There is no evidence whatsoever that this is an ongoing activity.

Thank you.

Mr. O'NEIL. Obviously I am not familiar with the experience in the field, but I do sense that that is the principal new argument put forth in the constitutional equation.

Senator MCCONNELL. Right.

Mr. O'NEIL. Third, there is a good deal of feeling that expenditure limits would fare better if they were voluntary rather than mandatory. There is even a footnote in the *Buckley* opinion that invites such an approach. If such limits were truly voluntary, then I think that conclusion would be sound, although I doubt that a completely non-coercive system would accomplish very much.

In the real world, such limits would much more likely accompany public campaign funding with some risks for non-adherence or non-compliance. That approach I don't think would win a great deal of favor from a Supreme Court that for well over 30 years has been very scrupulous about looking at indirect means of accomplishing purposes or objectives that government can't constitutionally accomplish by direct means.

Fourth, and finally, some observers think that the Supreme Court would now be more receptive to expenditure limits than they were in the 1970's. I would have to say that *Buckley's* distinction between limits on contributions and expenditures has always puzzled me, as it has most people who work in this area. I appreciate that in the *Austin* case just a few years ago, the Court did seem a bit more friendly to one type of expenditure curb. But the *Austin* case seems to me pretty much the outer limit of what the Court is prepared to tolerate. In other First Amendment areas apart from campaign finance, the present Court has been at least as protective as the Court was in the mid-seventies.

Just 3 weeks ago, in fact, as I am sure the committee is aware, the Court agreed to review the Colorado Republican Federal Campaign Committee case. The court of appeals had upheld the coordinated expenditure limits of Section 441a(d)(3) against a very strong First Amendment challenge. Now, there are all sorts of reasons why the Supreme Court agrees to take a case. Four Justices might simply have wanted to affirm the lower court judgment. But I think it is much more likely that there is a majority to limit the *Austin* case to expenditures by business organizations, trade associations, and direct corporate expenditures. And I would not infer from this recent grant of the *Colorado* case that the Court will overrule *Buckley's* basic distinction between contributions and expenditures.

So it seems to me the Court really has expressed a strong view about independent campaign and candidate expenditures. It has

reaffirmed that view often enough to give it considerable force and vitality. Suggestions that *Buckley* could be distinguished under changed conditions or by a different formula don't, I think, fully recognize the strength of the Court's view from which, in concluding, I would quote this brief segment.

The independent expenditure ceiling . . . heavily burdens core First Amendment expression . . . Advocacy of the election or defeat of candidates for Federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.

That is 20 years ago, but that is essentially what I would expect the Court to say on the same subject if faced with the same issue today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. O'Neil follows:]

PREPARED STATEMENT OF ROBERT M. O'NEIL, THOMAS JEFFERSON CENTER
FOR THE PROTECTION OF FREE EXPRESSION

Since I come from Charlottesville, and head a center that bears Thomas Jefferson's name, I wish I could begin by telling you precisely how Mr. Jefferson felt about campaign finance reform. Alas, I have been unable to locate any such statement. I might start instead with a personal note. While as a citizen and voter I find much merit in regulating campaign expenditures, I am here this morning as a student and follower of the First Amendment.

In that role, I have grave doubt whether the Supreme Court is ready to reverse itself and approve expenditure limits. Let me explain in these few minutes, focusing on that issue among many that S. 1219 raises. As a sometime debater, I know the status quo enjoys a presumption. As a legal scholar, however, I realize there is mounting hope for a change in the state of the law.

The case for such change seems to reflect four elements—different circumstances, a new rationale or interest, a more flexible and arguably voluntary system, and possibly a more receptive Supreme Court. The case is fully developed in Professor Vincent Blasi's recent *Columbia Law Review* article. Let me address each element in turn.

First, there is little doubt the realities of campaign finance have changed since Watergate. Yet the changes seem to me more quantitative than qualitative. Current conditions are not so different from the 1970's that one could fairly say the Supreme Court was unaware of what would be the forces of the 1990's. Moreover, the starkest change involves the use of personal wealth, which is probably the clearest case of protected expression. So change there *has* been, but not change of so basic a nature as to require a constitutional revolution.

Second, a different regulatory interest—protecting candidates' time—is now asserted in support of expenditure limits. This appealing rationale is different from the one rejected in *Buckley v. Valeo*, that of improving the quality of public debate. The *Buckley* decision did not categorically reject spending limits, since there was no need to go beyond the interests that were cited in the post-Watergate legislation. That part of *Buckley* has always seemed to me to go well beyond the specific rationale which the Court found constitutionally inadequate. Thus, different interests would surely get a hearing. It does not, however, seem to me likely that asserting the need to protect candidates' time would change the basic First Amendment equation.

Indeed, to the extent the Court's deference to Congress is a significant factor—and surely it is—protecting candidates' time might get even less deference than did the more objective goal of improving the quality of public debate. Moreover,

this newly asserted interest would need to be documented in some detail in both legislative and judicial records.

Third, there is some feeling that expenditure limits would fare better if they were voluntary rather than mandatory. A footnote in *Buckley* even invites such an approach. If such limits were truly voluntary, that conclusion would seem sound—though I doubt a completely non-coercive system would accomplish much. In the real world, such limits would more likely accompany public campaign funding, with substantial risks for non-adherence. Such an approach would not, I think, win much favor with a Court that has for three decades checked government's power to condition speech indirectly where direct curbs would be invalid.

Finally, some observers claim that the high Court would be far more receptive to expenditure limits than they were in the 1970's. *Buckley*'s distinction between limits on contributions and expenditures has always puzzled me. I appreciate that in the *Austin* case the Court recently seemed more friendly to one type of expenditure curb. That judgment seems to me the outer limit. Indeed, in other First Amendment areas, the Court is at least as protective as it was in the mid-1970's.

Just 3 weeks ago, as you surely know, the Court agreed to review the *Colorado Republican Federal Campaign Committee* case. The court of appeals had upheld the coordinated expenditure limits of section 441a(d)(3) against First Amendment challenge. Granting review of this case may reflect various factors. Four Justices might simply wish to affirm the lower court judgment. More likely, I suspect, is the emergence of a majority to limit *Austin* to expenditures by entities like business organizations and trade associations. I would not readily assume the Supreme Court is ready to reverse field and overrule *Buckley*'s basic distinction between contributions and expenditures.

Thus, on all counts, it seems to me the Supreme Court has expressed a view about independent campaign expenditures, and has reaffirmed that view often enough to give it great force and vitality. Suggestions that *Buckley* could be distinguished under changed conditions or by use of a different formula fail, in my view, to recognize the strength of the Court's conviction, from which I would quite just this brief segment:

[T]he independent expenditure ceiling . . . heavily burdens core First Amendment expression. . . . Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.

Within the remaining time, and my own incomplete understanding of the complexities of campaign reform legislation, I would be happy to respond, elaborate or clarify.

The CHAIRMAN. Thank you very much, President O'Neil.

Mr. Cox, how honored we are here, not only on this committee but the Senate as a whole, to have you appear and contribute to this very important dialogue.

TESTIMONY OF ARCHIBALD COX, HARVARD LAW SCHOOL, CAMBRIDGE, MA

Mr. COX. It has been quite a long time since I have been here. It is a pleasure to be here again. I thank you and the members of the committee for the opportunity.

The CHAIRMAN. And if you would draw that microphone up more closely, we would appreciate that.

Mr. COX. Certainly.

It is imperative, in my opinion, that Congress act now to curb the abuses and restore public confidence in the integrity of

elections and, indeed, in the integrity of the Congress itself. In my opinion, the provisions of S. 1219, with one possible exception—probable exception, perhaps I should say—are constitutional. The heart of the plan, the voluntary spending limits tied to benefits seem to me to be well within *Buckley v. Valeo* and, indeed, to be sustained by the decision in *Buckley v. Valeo*. I see no place where the constitutional defense of the provisions of the bill does other than completely accept everything the Supreme Court held with respect to expenditures and contributions in *Buckley v. Valeo*. Here the plan is entirely voluntary. The incentives to comply are less than the incentives upheld in *Buckley* and the later decision in the *Republican National Committee* case. I can't think of any incentive greater than the offer to fund the full cost of an opponent's campaign.

Turning to particular details, any imposition on the broadcaster it seems to me is constitutionally justified by the public interest in greater opportunities for communication by a candidate, in freeing candidates from money raising, and for precedent there is the *Red Lion* case and the *CBS* case, both cited in my statement.

Some attention may be focused on the raising of individual limits on contributions from \$1,000 to \$2,000 if a candidate's opponent chooses not to accept the voluntary ceilings. I think that that is constitutional for the reasons stated by the Court of Appeals for the First Circuit in the *Vote Choice* case. There are gains in having candidates accept public financing, as the Supreme Court recognized in *Buckley v. Valeo*, and there is wide room for congressional judgment as to at what stage, what level, a private contribution carries undue influence or the appearance of undue influence.

The doubtful provision, in my view, is the total ban on PAC contributions. I think its constitutionality is doubtful, arguable on both sides. Reducing the PAC ceiling to \$1,000 seems to me to be constitutional, bearing in mind the wide discretion, again, that Congress has in determining what contributions carry corruption, undue influence, or the appearance of corruption or undue influence. And I emphasize the latter.

I further might point out that whether the PAC ceiling is higher or lower has little effect upon the speech of the group formed in the PAC, because the speech that is communicated by the contribution by that group is simply, "We endorse the candidate." There is that message in either event. Again, I am following the Supreme Court opinion in *Buckley v. Valeo*. I think the aggregate limit is constitutional for the same reason.

Finally, the soft money provisions seem to me to raise no constitutional question. Money that affects Federal elections, contributions that affect Federal elections are subject to—are within the power of Congress to regulate.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF ARCHIBALD COX, CARL M. LOEB EMERITUS
PROFESSOR, HARVARD LAW SCHOOL, CAMBRIDGE, MA

I appreciate the opportunity to testify before this Committee on the constitutionality of S. 1219, the Senate Campaign Finance Reform Act of 1995. I have long believed that comprehensive campaign finance reform is a necessity in order to restore public confidence in our government. I am pleased to see the Committee hold hearings on this matter of the utmost importance to the American people.

This week marks the 20th anniversary of the decision in *Buckley v. Valeo*, 424 U.S. 1 (1976). The decision still provides the framework for analyzing the constitutionality of campaign finance regulations. It is the starting point for reviewing the issues presented by S. 1219.

In general the *Buckley* decision affirmed Congress' role in ensuring that our political process remains free from the taint of corruption. The Court upheld the constitutionality of contribution limits as necessary to deter the reality or the appearance of *quid pro quos* that can arise when large contributions are given to candidates by wealthy individuals and special interest groups. The Court said:

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual contributions—in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation . . . To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. [424 U.S. at 26–7]

In a number of cases since *Buckley*, the Court has not wavered from this core conviction that regulation of money in politics will withstand scrutiny under the First Amendment if it is tailored to forestall the reality or appearance of corruption in the political process. That principle remains the fundamental constitutional rationale for campaign finance reform legislation, including S. 1219.

The Court in *Buckley* also upheld the presidential campaign finance system from various challenges under the First and Fifth Amendments. Under the presidential system, candidates receive public benefits in exchange for their voluntary adherence to spending limits. In the primary election, candidates who opt into the system receive payments of public funds which partially match their privately raised contributions. In the general election, the two major party candidates receive full public funding if they agree to limit their spending to that amount of money. The Court approved spending limits in this context as permissible because they are voluntary.

With these principles in mind, I turn to a discussion of some of the major elements of S. 1219. I do not purport to give a full exposition of the constitutional rationale for each provision, but rather to briefly sketch the basis for the argument.

1. Voluntary spending limits. Like the presidential campaign system reviewed in *Buckley*, S. 1219 provides for voluntary spending limits. Candidates who opt into the system and agree and abide by spending limits, which are pegged to the population of the state, in return receive a modest amount of free television time from broadcast licenses in the state, as well as the right to buy additional time at a substantial discount. Complying candidates also receive the right to make reduced cost mailings to the voters in their states.

The spending limits are constitutional because, as in *Buckley*, they are voluntary. Candidates are free to reject the benefits offered by the bill, and to thus spend in excess of the limits. Although *Buckley* rejected mandatory spending limits tied to the receipt of a benefit such as public financing or free television time.

Nor is there any claim that the benefits offered by S. 1219 are so coercive as to render the spending limits essentially mandatory. It is hard to imagine a stronger incentive to comply with spending limits than full public financing of a candidate's campaign. Yet the Court approved precisely that scheme for presidential general elections. If full public financing is not unconstitutionally coer-

cive, then the comparatively less valuable incentives in S. 1219 would clearly pass muster as well.

2. Broadcast discounts. As noted above, S. 1219 provides candidates who comply with spending limits the right to 30 minutes of free television time and the ability to buy additional time at a 50 percent discount from the lowest unit rate. A question may be raised whether Congress has the power to compel private broadcaster to provide such a free or discounted broadcast time to political candidates.

Congress already requires broadcasters to sell time to candidates only at lowest unit rate, which itself is a benefit. This existing requirement, as well as the stronger requirements in S. 1219, are grounded on the premise that Congress can impose reasonable regulations on a broadcast licensee's use of the airwaves, which are a public resource. Broadcasters are granted a license to use the public airwaves for commercial purposes so long as they serve the "public interest." The public interest is served by the requirement in S. 1219 to provide free or reduced rate broadcast time to political candidates for the same reason that the Court in *Buckley* found that public financing met the General Welfare Clause—it is intended "to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising." 424 U.S. at 91.

This conclusion is buttressed by the decisions upholding regulation of broadcasters in the public interest. In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), for instance, the Court upheld the response time provisions of the fairness doctrine, which require broadcast licensees to provide air time to respond to personal attacks. The Court there noted that "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." *Id.* at 390. Similarly, in *CBS v. FCC*, 453 U.S. 367 (1981), the Court upheld the rule establishing a candidate's right of access to broadcast time, noting that this provision "makes a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process." 453 U.S. at 396. The regulation imposed on the broadcast licensees was permissible in order "to ensure that an important resources—the airwaves—will be used in the public interest." *Id.* at 397. Precisely the same public interest in the "effective operation" of congressional elections will be served by the broadcast benefit provisions of S. 1219.

3. Variable contribution limits. S. 1219 provides that if a candidate complies with the spending limits and is opposed by a candidate who does not comply with the limits, the contribution limit of the complying candidate is raised from \$1,000 to \$2,000.

Although there is no Supreme Court precedent scheme has been upheld by the First Circuit Court of Appeals. In *Vote Choice v. DiStefano*, 4F.3d 26 (1st Cir. 1993), the First Circuit approved a Rhode Island campaign finance reform law which granted free time on the state cable system to gubernatorial candidates who adhered to voluntary spending limits. In addition, when a complying candidate was opposed by a non-complying candidate, the contribution limit of the complying candidate was doubled to \$2,000. The Court reviewed this scheme and found it to be constitutional.

A federal district court has struck down a different variable contribution limit under Kentucky law that provided for a 5 to 1 differential between complying and non-complying candidates. *Wilkinson v. Jones*, 876 F.Supp. 916 (W.D.Ky 1995). The court there found the differential so great as to be coercive to the non-complying candidate. The court acknowledged that the lesser 2 to 1 variable in the *Vote choice* case was found to be permissible by the First Circuit.

I believe that the *Vote Choice* case was rightly decided. On the basis of this precedent, I believe there is a strong argument that the modest 2 to 1 variable limit in S. 1219, like the variable limit in the *Vote Choice* case, would be found to be constitutional.

4. Restriction on PAC's. S. 1219 takes a two-fold approach to regulation of PAC's. In the first instance, it bans PAC's. If, however, such a ban is held unconstitutional, it reduces the contribution limit applicable to PAC's from

\$5,000 per election to \$1,000 per election. It further states that no candidate can receive PAC contributions which, in aggregate, exceed 20 percent of the aggregate election cycle limit applicable to that candidate.

The constitutionality of a flat ban on PAC contributions has not been adjudicated. It can, I believe, be clearly documented that PAC contributions have a disproportionately corrupting influence in the political process because they are typically tied to a specific legislative agenda and coupled with a sophisticated lobbying effort. Thus, PAC contributions—more than individual contributions—pose and are perceived to pose a threat of corrupt *quid pro quos* in the political process.

If, however, the PAC ban is struck down, the fall back restrictions on PAC's will, in my judgement, withstand scrutiny. Congress has broad discretion to determine the appropriate contribution limit. If, based on the considerations set forth above, Congress determines that PAC money is playing too dominant a role in campaigns and thus leading to an erosion of public confidence in government, it is well within Congress' right to reduce the PAC contributions is supported by a compelling public purpose.

5. **Restrictions on "soft" money.** "Soft" money—money that is illegal under federal law—has become one of the most pernicious problems in the political process today. These contributions are raised by the national political parties, solicited by federal campaigns. Once again we see huge corporate contributions and contributions from wealthy individuals in amounts of \$250,000 or more being part of our federal campaign system. This loophole has permitted the reintroduction of Watergate-style campaign contributions back into our national political life.

S. 1219 would close the soft money loophole by prohibiting the national political parties from soliciting or receiving any money that is not in compliance with federal restrictions on sources and limitations on amounts. It would also prohibit the state parties from spending any money on activities which affect federal elections, such as voter registration or get-out-the-vote drives in federal election years, unless such funds comply with federal laws.

I believe that these provisions are clearly constitutional. *Buckley* recognized that Congress has broad authority to ensure the integrity of federal elections. The contribution limits upheld in *Buckley* were intended precisely to prohibit the kinds of huge contributions that the "soft" money loophole has permitted. For Congress to act to close that loophole is entirely consistent with the principles of *Buckley*. These provisions are necessary to protect the integrity of the existing system of campaign finance regulation.

The analysis of the provisions of S. 1219 set forth above is necessarily limited by the very brief time I have had to prepare this testimony. I would appreciate the opportunity to supplement this testimony with a longer statement to be submitted for the record that could elaborate upon the points set forth above, as well as on any questions that members of the Committee may have.

The CHAIRMAN. Thank you very much, Professor Cox.
Mr. Gora?

TESTIMONY OF JOEL M. GORA, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. GORA. Thank you, Mr. Chairman. I want to commend you for having these hearings. I think we all share a common goal, and that is to figure out the best way to expand political opportunity and participation without stifling freedom of speech.

I also want to commend you, Senator McConnell, on behalf of the ACLU. From lobbying disclosure to the constitutional amendment to ban flag desecration, to campaign finance reform, you have been a stalwart friend of the First Amendment. You are

living proof that the defense of civil liberties is not the province of a single party or of a single issue group.

In the *Buckley v. Valeo* case, which was decided 20 years ago this week, fundamental rights of political freedom were on the line. That act limited expenditures and contributions for political activity. Senator Bradley, with all due respect, said it is just a matter of money not being speech. But limiting political expenditures means limiting political speech. The act in *Buckley* made it a felony to run a one-half-page ad in The Washington Post criticizing the President of the United States and urging his defeat the polls. It made it a felony because it said that no person could spend more than \$1,000 independent of any cause on electoral advocacy. And I don't care what theory of the First Amendment you have, there is something fundamentally flawed with any statute that would make a crime running a small ad in the Washington Post attacking a sitting President.

Number two, free speech is tough. If you try to suppress it here, it is going to pop up there. If you limit contributions, you are going to have PAC's. If you limit PAC's, you are going to have issue groups like the ACLU. If you limit issue groups, you are going to have media groups that are going to influence the outcome of the election.

You basically have three choices. You can try to limit all political speech and control it and manage it, and Senator Bradley's elaborate proposal seems to head in that direction. It seems to me that is a recipe for repression. Or you can ban some political speech and not others, which is a recipe for gross unfairness, which is what we have under our current system. Or you can let all people bring their resources and their thoughts to bear on the political debate, which is the recipe of the First Amendment.

And so we are not opposed to campaign finance reform. We would just like to see campaign finance reform that opens up the political process to all rather than only to some. And there are a number of positive measures that we have long supported. We are not just nay-sayers on this issue. We don't come in and just say the First Amendment says you can't do any of this stuff. What the First Amendment says is you can't restrict speech. There is nothing in the First Amendment that prohibits encouraging speech. Indeed, the First Amendment's essential instinct is to encourage speech.

So we look for positive—

The CHAIRMAN. Let me just interrupt you one minute.

Mr. GORA. Yes.

The CHAIRMAN. You are testifying as an individual, but you repeatedly use the pronoun "we."

Mr. GORA. Well, I am testifying on behalf of the ACLU and its members, Senator.

The CHAIRMAN. All right. I want to make that clear.

Mr. GORA. We are interested in positive measures for expanding political opportunity, and those include, for example, modest tax credits for a political contribution. That was once in our law. I took advantage of it a few times. And it is the best kind of financing of politics because it is private financing publicly supported. It doesn't involve some of the things that you are concerned about, Senator Warner.

There are a number of other ideas available. Make the frank available to all candidates. What is the problem? It is available to House members and Senate members. Make it available to anybody that is a legally qualified Federal candidate. It might have an impact on the budget, but if we are suffering a crisis of democracy, maybe we ought to put our money where our mouth is and come up with some public resources to help support politics.

If the alternative is limiting speech and limiting political association and limiting political activity, that is an alternative that is not permitted under the First Amendment.

In my testimony, I have analyzed this bill. Unfortunately, like so many of its predecessors, S. 1219 is fundamentally flawed because it takes the approach of limits and restrictions and controls and who can speak and who can speak not and how much in between. There are really two choices in this area. American politics are suffering from a lack of opportunity. We need more people involved. We need more people willing to participate. And you can do two things. If you have a situation where there are many people that have resources, you can try to control the ones that have resources, but I think this choice is both unconstitutional and futile. People with resources will always try to bring them to bear on politics. And as I said, if you have issue groups or PAC's or media spending or cause organizations, you are not going to be able to restrict the haves. And the other alternative is to help the have-nots, provide subsidies, benefits, floors without ceilings.

So that is really the choice. You can either try to restrict speech because some people, it is said, have too much. Or you can try to support speech so that everybody has at least enough. That is the choice, and in a sense it is a choice that has really already been made for us, and it has been made by the Framers over 200 years ago when they wrote the First Amendment.

Thank you.

[The prepared statement of Mr. Gora follows:]

PREPARED STATEMENT OF JOEL M. GORA, PROFESSOR OF LAW, BROOKLYN LAW SCHOOL, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

My name is Joel M. Gora. I appreciate the opportunity to testify before you today on behalf of the American Civil Liberties Union (ACLU). The ACLU is a nation-wide, non-partisan organization of more than 275,000 members devoted to protecting the principles of freedom set forth in the Bill of Rights and the Constitution. I will focus my remarks on the civil liberties implications of general campaign finance reform concepts, the implications of these proposals on First

Amendment rights, and the application of those principles to S. 1219, the Senate Campaign Finance Reform Act of 1995. I would request permission to revise and extend my remarks before the record of these hearings is closed.

By way of introduction, I am Associate Dean and Professor of Law at Brooklyn Law School, where I teach Constitutional Law. I am also a General Counsel of the New York Civil Liberties Union and a former Associate Legal Director of the American Civil Liberties Union. In that capacity, I have been actively involved since 1972 in studying and litigating the constitutionality and practicality of campaign finance laws. I was privileged to be one of the ACLU attorneys who argued for the plaintiffs before the Supreme Court in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976). Tuesday marked the twentieth anniversary of that landmark decision.

The ACLU has long maintained that limitations on contributions and expenditures for the purpose of advocating candidates and causes in the public forum violate the First Amendment. And the ACLU has long suggested that the way to solve the problems of campaign finance is to *expand* political participation by providing public financing for all legally qualified candidates, without conditions or limitations, not to *restrict* contributions and expenditures which enable groups and individuals to communicate their message. In our view, public subsidies for political campaigns can have a variety of beneficial effects on facilitating access to the political process.

But we oppose the bill before you because it disregards these principles and violates the First Amendment rights of candidates and non-candidates alike in numerous ways.

The provision for "voluntary" spending limits in Senate campaigns violates the free speech principles of *Buckley v. Valeo*. The outright ban and severe fall back limitations on PAC's violate freedom of speech and association, as do the limitations on "bundling." The unprecedented controls on raising and spending "soft money" by political parties and even non-partisan groups intrude upon First Amendment rights in a manner well beyond any compelling governmental interest. The revised provisions governing the right to make independent expenditures both improperly obstruct that core area of electoral speech and impermissibly invade the absolutely protected area of issue advocacy. The reduced recordkeeping threshold for contributions and disbursements, from \$200 down to \$50, invades associational privacy. And the new powers given to the Federal Election Commission to go to court in the midst of a campaign to enjoin "a violation of this Act" pose an ominous and sweeping threat of prior restraint and political censorship.

S. 1219 suffers from many of the same flaws as the original statute at issue in *Buckley v. Valeo*. There the ACLU contended that the Federal Election Campaign Act of 1974 was bad constitutional law because it cut to the heart of the First Amendment's protections of political freedom. It limited the ability of groups and individuals to get their message across to the voters. The very essence of the First Amendment is the right of the people to speak, to discuss, to publish, to join together with others on issues of political and public concern. This constitutional protection of the right of the people to join together to form groups and organizations and societies and associations and unions and corporations to articulate and advocate their interests is the genius of American democracy. And this is particularly vital in connection with political election campaigns when issues, arguments, candidates and causes swirl together in the public arena. Yet, the 1974 Act imposed sweeping and Draconian restraints on the ability of citizens and groups, candidates and committees, parties and partisans to use their resources, to make political contributions and expenditures, to support and embody their freedom of speech and association.

The ACLU also insisted the Act was poorly crafted "political restructuring" rather than real "political reform" because it exacerbates the inequality of political opportunity, enhances dependence upon money and moneyed interests in politics and magnifies the power of incumbency as the single most significant factor in politics. Limits on giving and spending make it harder for those subject to the restraints to raise funds and easier for those outside the restraints to bring their resources to bear on politics. Limiting individual contributions to \$1,000 per

candidate, while allowing PAC's, made legitimate by the "reforms," to contribute \$5,000 per candidate, would make it harder to raise money from individuals and make candidates more dependent on PAC's. And PAC's, often representing entrenched interests, would be more likely, though far from inevitably, to prefer incumbents to challengers as beneficiaries of their largesse. The Act would stifle not expand political opportunity. What you had, we warned, was an unconstitutional law, enacted by Congress, approved by the President, enforced by an agency, the Federal Election Commission, beholden to each, and designed to restrain the speech and association of those who would criticize or challenge or oppose the elected establishment. Talk about the powers of incumbency. That's why we called the Act an "Incumbents Protection Act."

In *Buckley v. Valeo*, the Supreme Court held that any government regulation of political funding—of giving and spending, of contributions and expenditures—is regulation of political speech and subject to the strictest constitutional scrutiny. The Act's limitations on political expenditures—by committees, campaigns and candidates, no matter how wealthy—flatly violated the First Amendment. *Nothing* can justify the government telling the people how much they could spend to promote their candidacies or causes. Not in this country. Nothing. "In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign." *Buckley v. Valeo*, 424 U.S. 1, 57 (1976).

Nor could the Congress try to help "equalize" political speech and the ability to influence the outcome of elections by imposing restraints on some speakers: "... the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley v. Valeo*, 424 U.S. at 48–49.

Unfortunately, the decision in *Buckley* upheld the Act's contribution limits of \$1,000 for individuals and \$5,000 for political committees. The Court did this because of its stated concern that unlimited gifts to candidates was a recipe for corruption, a ruling that ensured the two decades of frustration and unfairness that have ensued. With no limits on overall campaign spending or on wealthy candidates, and with independent campaign committees, issues groups and the press free to use their resources to comment on candidates and causes *without limit*; but with less well-funded candidates hampered in their ability to raise money from family, friends and supporters, the stage was set to make two factors dominant: the advantages of incumbency and the dependency on PAC's. The advantages of incumbency meant that public resources such as franking privileges, government funded newsletters and free television coverage (C-Span) made it easier for Members of Congress to communicate with the voters, while challengers have to spend restricted amounts of money in order to achieve the same visibility.

The dependency on PAC's resulted from severe limitations on the amounts of money that individuals can contribute directly to candidates, coupled with the markedly increased cost of campaigning, which made PAC contributions a very important source of campaign funding. And the individual contribution limit was kept at \$1,000, which, adjusted for inflation, is probably worth about \$400 in real dollars today.

That is why for 20 years candidates have had to look more to PAC's in order to raise funds and incumbents, in particular, have had an easier ability to do so.

And for 20 years, the ACLU has suggested the way to solve these various disparities and dilemmas is to *expand* political participation, by providing public financing or support for all legally qualified candidates, without conditions and restrictions, not to *restrict* contributions and expenditures which enable groups and individuals to communicate their message to the voters.

Unfortunately, in all of its critical aspects, S. 1219, The Senate Campaign Finance Reform Act of 1995 fails to facilitate broader political participation and it also unconstitutionally abridges political expression.

1. The provisions for "voluntary" expenditure limits in Senate campaigns violate First Amendment principles.

First, Title I of the bill, providing "spending limits and benefits" for Senate election campaigns, is an attempt to coerce what the law cannot command: limitations on overall campaign expenditures and on the use of personal funds for a candidate's own campaign. It is a backdoor effort to impose campaign spending limits—which inevitably benefit incumbents—in violation of the essential free speech principles of *Buckley v. Valeo* and the doctrine of unconstitutional conditions. And it should be observed that what triggers benefits for some candidates and burdens for others is not that a candidate approaches or exceeds relevant spending limits, but simply refuses to agree to be bound by them.

The ACLU believes that the receipt of public subsidies or benefits can never be conditioned on surrendering constitutional rights. To do so would be to penalize the exercise of those rights. See *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *FCC v. League of Women Voters*, 468 U.S. 364 (1984). Since candidates have an unqualified right to spend as much as they can to get their message to the voters, and to spend as much of their own funds as they can, and to raise funds from supporters all over the country, they cannot be made to surrender those rights in order to receive public benefits.

In *Buckley* the Court suggested that Congress could establish a system whereby candidates would choose freely between full public funding with expenditure limits and private spending without limits, "as long as the candidate remains free to engage in unlimited private funding and spending instead of limited public funding." *Republican National Committee v. Federal Election Commission*, 487 F. Supp. 280, 284 (S.D.N.Y.), *aff'd mem.*, 445 U.S. 955 (1980). See *Buckley* at 57, n. 65. Contrary to its supporters claims, S. 1219 does not establish such a regime of voluntary campaign spending limits. Rather, the bill denies significant benefits to and imposes burdens on those candidates who refuse to agree to limit their campaign expenditures, while conferring a series of advantages upon those candidates who agree to the limits.

First, by banning PAC contributions entirely, the bill makes it more difficult for candidates to raise and spend money at all, which will make them more susceptible to accepting the expenditure and other limitations. Candidates who refuse to accept spending limits have to work harder to raise funds because the limits on contributions to their opponents are raised automatically from \$1,000 to \$2,000. And then such disfavored candidates have to pay full rates for broadcasting and postage. Finally, the expenditure ceilings of their opponents are raised by 20 percent to make it easier to counter the messages of "non-complying" candidates.

In short, this scheme does everything possible to help the candidate who agrees to spending limits to overwhelm the candidate who does not. That is not a level playing field.

Indeed, in *Buckley* the Court upheld public funding of Presidential campaigns because its purpose was "not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." 424 U.S. at 92-93. S. 1219 fails this test, for its purpose and effect are to limit speech, not enhance it. Recent cases have invalidated other schemes for making candidates "voluntarily" agree to expenditure and other restraints by penalizing those who do not, see *Shrink Missouri Government PAC v. Maupin*, —F.3d—, 64 Law Week 2409 (8th Cir. 1995) (restricting funding sources of those who refuse to agree to abide by expenditure limits violates the First Amendment) ("We are hard-pressed to discern how the interests of good government could possibly be served by campaign expenditure laws that necessarily have the effect of limiting the quantity of political speech in which candidates for public office are allowed to engage." *Id.* at —); Moreover, even if the Act did create a level playing field, the incumbent starts the game 10 points ahead because of greater fund-raising ability, name recognition, access to the news media and other benefits of incumbency. All things being equal, the incumbent starts out ahead. Any law which imposes financial penalties and disincentives on speech because of the interaction between the status of the speaker and the content of the speech is constitutionally suspect. See *Simon & Schuster, Inc. v. Members of the New York State Crime Victims*

Board, 502 U.S. 105 (1991) (law improperly escrowed profits from writings about a criminal's crime); *United States v. National Treasury Employees Union*, 516 U.S. — (1995) (invalidating overbroad honorarium ban on moonlighting speeches and articles by federal employees). Schemes of public benefits for political action which are structured in such a fashion that the government seems to be showing favoritism to certain categories of candidates and penalizing others also have been held to be a form of unconstitutional political discrimination, violative of both free speech and equality principles. See *Greenberg v. Bolger*, 497 F. Supp. 756, 774–78 (E.D.N.Y. 1980) (preferential mailing rates for major parties struck down as violative of the First Amendment); *Rhode Island Chapter of the National Women's Political Caucus v. Rhode Island State Lottery Comm'n*, 609 F. Supp. 1403, 1414 (D.R.I. 1985) (allowing major parties but not other groups to conduct fundraising lottery events violated the First Amendment); *McKenna v. Reilly*, 419 F. Supp. 1179, 1188 (D.R.I. 1976) (State parties' allocation of tax check off funds to endorsed candidates and exclusion of funds to unendorsed candidates violated First Amendment).

Finally, some of the strings attached to the benefits offered would impose unprecedented controls on political speech by dictating the format of campaign speech. The requirement that free air time cannot be used for campaign commercials of less than 30 seconds is an impermissible interference with the content of political speech. See *McIntyre v. Ohio Election Commission*, 115 S. Ct. 1511, 1518 (1995). The only conceivable purpose for this restriction is that Congress thinks 10 second spot commercials are politically objectionable. That is the kind of content-based judgment that Congress cannot make, even when it is conferring a benefit; nor can Congress compel the structure of speech in that fashion. See *McIntyre*, *supra*; *Wooley v. Maynard*, 430 U.S. 705 (1977); *Riley v. National Federation of the Blind*, 487 U.S. 781, 797 (1988).

The *McIntyre* and *Riley* decisions also call into question the provisions of the Bill (Section 302, Campaign Advertising) that mandate certain specific identifications and disclosures in the text of print, display or broadcast political advertisements. In *McIntyre* the Court reaffirmed the historic right of political anonymity and invalidated a requirement that leaflets on referenda issues state the name of the person responsible for the publications. And in *Riley*, the Court struck down a compulsory disclosure statement on charitable solicitation literature, finding a violation of the settled principle that the First Amendment encompasses "the decision of both what to say and what *not* to say." 487 U.S. at 797.

2. The complete ban on, as well as the "fallback" restrictions of, Political Action Committees are invalid under clear Supreme Court precedent.

Subtitle A of Title II, the Draconian provision which proudly proclaims that it enacts "Elimination of Political Action Committees from Federal Election Activities" and which bans PAC political activity, is flatly unconstitutional. In outlawing all political expenditures and contributions "made for the purpose of influencing an election for Federal office"—except those made by political parties and their candidates,—Section 201 of the bill cuts to the heart of the First Amendment's protection of freedom of political speech and association. It gives a permanent political monopoly to political parties and political candidates, and would silence all those groups that want to support or oppose those parties and candidates.

"PAC's" of course have become a political dirty word. We tend to think of the real estate PAC's or the Trial Lawyers' PAC or the insurance and medical PAC's or the tobacco-related PAC's. But the ACLU's first encounter with a "PAC" was when we had to defend a handful of old-time dissenters whom the government claimed were an illegal "political committee." The small group had run a 2-page advertisement in *The New York Times*, urging the impeachment of President (and re-election candidate) Richard Nixon for bombing Cambodia and praising those few hardy Members of Congress who had voted against the bombing. In the summer of 1972, before the ink was dry on the brand new Campaign Act of 1971, the Justice Department used that "campaign reform" law to haul the little group into court, label them a "political committee" and threaten them with injunctions

and fines unless they complied with the law—all for publicly speaking their minds on a key political issue of the day. The Court of Appeals quickly held that the group was an *ad hoc* issue organization, not a covered “political committee.” But we got an early wake-up call on what “campaign reform” really meant.

Of course “real” PAC’s, i.e., those that give or spend money to or on behalf of federal candidates, come in all sizes and shapes. They can be purely ideological or primarily self-interested, or both simultaneously. And they span the political spectrum. Labor PAC’s were organized first, in the 1940’s, usually to provide funds, resources and personnel to assist political candidates, usually Democrats. Corporate PAC’s came on line in the early 1970’s, usually on the Republican side. And both corporate and labor PAC’s were legitimized and liberated by the “reforms” of the FECA, which allowed those and all other PAC’s to contribute five times as much money to federal candidates as individuals could. All this turned the Federal Election Campaign Act into the PAC Magna Carta Act.

We think all that PAC activity is simply a reflection of the myriad groups and associations that make up so much of our political life. And so many of them are an effective way for individuals to maximize their political voice by giving to the PAC of their choice. While many PAC contributors and supporters probably do fit the stereotype of the glad-handing, Washington-based influence peddler, millions of PAC supporters contribute less than \$50 and expect nothing from the candidates in return. Indeed, for millions of Americans, writing a check to the candidate, committee or cause of their choice is a fundamental political act, second in importance and meaning only to voting.

Proposals to restrict, restrain or even repeal PAC’s would suppress the great variety of political activity those PAC’s embody. Most of those proposals are doomed to defeat as unconstitutional. All of them are doomed to defeat as futile.

Banning PAC Contributions

There is not a word in *Buckley v. Valeo* or any of the other relevant cases on regulation of PAC’s which suggests that the Court would uphold a total ban on PAC contributions to federal candidates. Political contributions are fundamentally protected by the First Amendment, as embodiments of both speech and association. PAC’s do amplify the political voices of their contributors and supporters across the entire spectrum of American politics, and the Court is not likely to let you still all those voices.

Moreover, banning PAC contributions is futile as a reform. All the PAC money that cannot be contributed directly to candidates will go instead into an upsurge of independent expenditure campaigns for favored or against disfavored candidates.

Banning PAC Expenditures

The Supreme Court made it clear that independent PAC expenditures are at the core of the First Amendment and totally off limits to restriction. *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480 (1985). It may be a little less tidy to run an independent campaign, than to write a check to your favored candidate, but PAC’s will adapt. They’re good at that. And little will have been gained—except making it harder for candidates to raise money since you will have deprived them of a major source of resources, without providing any alternatives. Candidates of moderate means will be particularly vulnerable to campaigns by personally wealthy opponents.

Reducing PAC Contributions

The “fallback” provision, which goes into effect when the flat ban is ruled unconstitutional, as it surely will be, would lower PAC contributions from \$5,000 to \$1,000 per candidate per election. This might be a closer constitutional question. But the Court threw out a \$250 limit on contributions to a referendum campaign committee. See *Committee Against Rent Control v. Berkeley*, 454 U.S. 290 (1981). Indeed, just recently the Eighth Circuit likewise invalidated a \$300 contribution limitation for donations to statewide candidates. *Carver v. Nixon*,—F.2d—, 64 Law Week 2407 (8th Cir. 1995). And *Meyer v. Grant*, 486 U.S. 414 (1988) held that people had a right to spend money to hire others to gather election petition signatures, strongly reaffirming the right of a person to use his or her

resources to enlist others to advance their causes. In any event, this provision is fatally overbroad because it treats all PAC's alike, even those made up only of small contributors.

Finally, apart from the First Amendment issues, what purpose is served by reducing the ability of candidates to raise money without providing alternatives?

Bundling

The same objections pertain to the ban on "bundling" of individual PAC contributions. This fallback proposal would abridge freedom of association which the Supreme Court has recognized as a "basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973). And the Court has pointedly observed that "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process." *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 294 (1981). The practice of bundling reflects broad issue support to a candidate, indicating that continued support is dependent on continued adherence to the views represented by the group. The proposed bill would severely restrict ideological groups like EMILY's List, which have made a critical contribution to expanding political opportunity and opening up political doors to candidates and groups so long excluded.

Receiving PAC Contributions

The fallback provision would also prohibit any PAC from making a contribution which raises a candidate's PAC receipts above 20% of the campaign expenditure ceilings applicable to that election. But this restraint also seems overbroad. The corruption concern becomes very attenuated in this setting, and the rationale for the overall 20 percent limit seems weak against First Amendment standards. Once the limit is reached, candidates and PAC's, in effect, would be banned totally from political interaction with one another, which would seem as constitutionally vulnerable as a total ban and have the effect of a limitation on campaign expenditures. And what of new groups that wanted to support a candidate after the candidate's PAC quota had been reached, especially if the campaign turns on an issue—abortion for example—of great moment to that group?

Finally, all of this begins to resemble yet another backdoor effort to limit overall campaign expenditures, in violation of *Buckley's* core principles.

Limiting Out-of-State Political Contributions

Somehow, I have always found particularly troublesome those proposals to limit the amount of out-of-district or out-of-State contributions to candidates. Section 241 does not seem to operate as a direct ban on out-of-State contributions. Rather it provides that a candidate must receive not less than 60 percent of their overall contributions from in-State individuals in order to remain in compliance with the spending limits and receive the statutory benefits. Obviously, this is a back-door effort to limit PAC contributions to candidates, since so many PAC contributors come from States different from the candidates their PAC's contribute to, as do the PAC's themselves. It also seems to be an effort to insulate incumbents from well-funded challenges supported from another State.

Any potential justification for this ban seems highly unlikely to pass constitutional muster. Analogizing this restriction to a voter's residency requirement falls short after *McIntyre v. Ohio Board of Elections*,—U.S.—(1995) which held that restrictions on political speech about candidates or referenda cannot be upheld on the grounds that they are merely ballot or electoral regulations, because, in reality, they are free speech limitations. Indeed, a federal court in Oregon recently so held in overturning a requirement that State and local candidates had to raise all their campaign funds from individuals who resided within their election districts. *Vannatta v. Keisling*,—F. Supp.—(D. Ore. 1995).

Moreover, in-State limitations could deprive particular kinds of underfinanced, insurgent candidates of the kind of out-of-State support they need. Just as much of the civil rights movement was funded by contributors and supporters from other parts of the nation, so, too, are many new and struggling candidates supported by interests beyond their home States. This proposal would severely harm such candidacies. Perhaps, that is its purpose.

Finally, Congress is our national legislature, and although its representatives come and are elected from separate districts and States, the issues you deal with are, by definition, national issues that transcend district and State lines and may be of concern to citizens all over the nation. When such issues become central in certain campaigns, people and groups from all over the country should be entitled to have their views and voices heard on those issues. Any other approach takes a disturbingly insular and isolated view of political accountability and the obligations of a Member of Congress.

III. The new controls on "soft money" contributions and expenditures are unprecedented and unjustified restraints on political parties.

The new sweeping controls on "soft money" contributions to and disbursements by political parties and other organizations, federal, State or local, would expand the reaches of the FECA into unprecedented new areas and far beyond any compelling interest would require.

For the first time, any amounts expended or disbursed by a political party in an election year "for any activity which might affect the outcome of a Federal election, including but not limited to any voter registration and get-out-the-vote activity, any generic campaign activity and any communication that identifies a Federal candidate. . ." would be subject to regulation. See Section 212. The full panoply of FECA compliance and control would be brought to bear on the enormous amount of political party activity which heretofore has been exempt from controls because it was not directly and explicitly focused on specific federal candidates. And even beyond that, "soft money" spending by persons other than political parties is also for the first time subject to comprehensive regulation, with reporting, disclosure and notification requirements mandated as well as a required certification of whether the disbursement "is in support of, or in opposition to, one or more candidates or any political party."

The reach of these new proposals is breathtaking. Starting with *Buckley v. Valeo*, the Court has recognized a fundamental constitutional distinction between candidate-focused expenditures and contributions, which can be subject to certain specific regulation, and all other non-partisan, political and issue-oriented speech, advocacy and association. See *Buckley v. Valeo*, 424 U.S. at 14-15, 78-80, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238, 249 (1986). The reason for this First Amendment Continental Divide is to insure that the permissible regulation of candidate-focused political campaign funding remains confined to that area, and does not expand to encompass all the funding of all political issues and groups. These regulations of funding which is not candidate-focused transgresses this boundary and requires, at the very least, the demonstration of the most compelling governmental interests, necessarily and narrowly achieved by the sweeping new controls.

Moreover, any regulation of political parties is a regulation of a quintessential First Amendment instrumentality and likewise requires compelling justification, at a minimum. See *Tashjian v. Republican Party*, 479 U.S. 208 (1986); *Eu v. San Francisco Democratic Party*, 489 U.S. 214 (1989). Political parties play a vital role in galvanizing the political life of the nation. Indeed, many political scientists have expressed mounting concern that one consequence of the current regime of candidate-focused political funding and activity is unfortunately to undermine the role of parties, special interest groups or *ad hoc* coalitions as instruments for political activity and vitality. For that reason, an expanded amount of party spending on voter registration, party identification, get-out-the-vote drives, and partisan-based issue discussion ("The Republicans want to cut Medicare and Medicaid. Don't let them do it." or, "The Democrats support a welfare state. Say no to government dependents.") should be a welcome development, rather than the target for new and overbearing regulatory restrictions. It is also a constitutionally-derived right: ". . . Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential." *Buckley v. Valeo*, 424 U.S. at 14-15.

Finally, to some extent the motivations for the new restraints on party activity may reflect a concern about the source of the "soft money" funding, namely, from corporations and large individual donors. In that regard, it should be observed that *Buckley* upheld the \$1,000 limit on individual contributions to candidates in part because there would be so many other ways in which people and organizations could bring their financial resources to bear on politics. See 424 U.S. at 28-29, 44-45. The bill would block avenues of advocacy that the *Buckley* Court assumed would remain open.

These issues are presently before the Supreme Court in an important case in which certiorari was granted in early January. See *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, O.T. 1995, No. 95-489, *reviewing*, 59 F.3d 1015 (10th Cir. 1995). At the very least, any action on this section of the bill should await the Court's resolution of the Colorado case. For your information, the ACLU plans to file an amicus curiae brief in support of the Colorado Republican Federal Campaign Committee.

IV. The new provisions governing the right to make independent expenditures improperly intrude upon that core area of electoral speech and impermissibly invade the absolutely protected area of issue advocacy.

Two basic truths have emerged with crystal clarity after twenty years of campaign finance regulations. First, independent electoral advocacy by citizen groups lies at the very core of the meaning and purpose of the First Amendment. Second, issue advocacy by citizen group lies totally outside the permissible area of government regulation.

In *Buckley* the Court upheld the speech and association rights of individuals to engage in independent campaign expenditures expressly advocating the election or defeat of political candidates. In *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480 (1985), the Court assured the same rights to political action committees. And in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 470 U.S. 238 (1986) the same right of express electoral advocacy was extended to certain kinds of non-profit advocacy groups despite their corporate form, although a later case held that other corporate entities could be restricted in this regard. See *Austin v. Michigan Chamber of Commerce*, 494 U.S.652 (1990).

S. 1219 abridges these rights in two ways. First, Section 201 of the bill completely bans independent expenditures by PAC's, which is flatly unconstitutional, as noted above. On the "fallback" assumption of such likely invalidation, Section 251 redefines independent expenditures so narrowly and "coordinated" expenditures so broadly that the area of freedom of speech and association is drastically reduced and abridged in the process.

Under current law, an independent expenditure is one made without the knowledge or permission of a candidate, his or her agent or campaign committee. See 2 U.S.C. section 431 (17) ("The term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate."). Coordinated expenditures are treated like and limited like contributions to a candidate.

The proposed bill, however, so broadly defines coordination that virtually any person who has had any interaction with a candidate or any campaign official, in person or otherwise, is barred from making an independent expenditure. For example, under Section 251, any expenditure is deemed coordinated, and not independent, if the person making it "has advised or counseled" the candidate or his agents on any matter relating to the campaign or election. If you use the same political consultant or firm as the candidate you are likewise deemed coordinated.

These restrictions embody a new and impermissible version of "guilt by association," and a new kind of "gag rule" by association. See *De Jonge v. Oregon*, 299 U.S. 353 (1937) (A speaker cannot be punished for organizing a meeting and

appearing on the same public platform where radicals were also speaking). Indeed, it could have some perverse effects. A disaffected campaign worker or volunteer, who leaves a campaign because he or she thinks a candidate has acted improperly, is barred from making independent expenditures against that candidate, for, ironically, they will be deemed a contribution.

The other way in which the provision governing independent expenditures is fatally flawed is in its expanded definition of "express advocacy," which is defined as a communication that "taken as a whole and with limited reference to external events" communicates "an expression of support for or opposition to" a specific candidate or groups of candidates. "Expression of support" includes "a suggestion to take action with respect to an election," including "to refrain from taking action." "Throw the rascals out" has just become express advocacy.

This broadened definition of "express advocacy" would sweep in the kind of essential issue advocacy which *Buckley* and cases predating *Buckley* by a generation, see *Thomas v. Collins*, 323 U.S. 516 (1945), have held to be immune from government regulation and control. It seems to be targeted exactly against the kind of voting record "box score" discussion that emanates from the hundreds and thousands of issue organizations that enrich our public and political life. In *Buckley*, the Court adopted a bright line test of express advocacy (words that in express terms advocate the election or defeat of a candidate) in order to immunize issue advocacy from regulation: "So long as persons or groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." *Id.* at 45. Indeed, the 1974 Act contained a similar provision regulating issue groups and their "box score" activities, and that section was unanimously held unconstitutional by the *en banc* Court of Appeals, without any further appeal by the government. See *Buckley v. Valeo*, 519 F.2d 817, 832 (D.C. Cir. 1975). The expanded definition of "express advocacy" is similarly flawed.

V. The bill gives unacceptable new powers of prior restraint and political censorship to the Federal Election Commission.

With all of these problems with the bill, particularly those that pertain to issue advocacy and independent expenditures, giving the Federal Election Commission sweeping new powers to go to court to seek an injunction on the allegation of a "substantial likelihood that a violation...is about to occur" is fraught with First Amendment peril.

As indicated earlier in this testimony, the very first suit brought under the brand spanking new campaign reforms in 1972 was against a small group of dissenters who sponsored an ad in *The New York Times* criticizing the President and praising a handful of his Congressional critics. Reminiscent of some of the language in the bill before you, the government's claim was that the advertisement was an electioneering message because it was "in derogation of" candidate Nixon and "in support of" the praised Members who were also up for re-election. While the courts quickly and sharply rebuffed those efforts to use political campaign laws to control issue advocacy, see *United States v. National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972); *American Civil Liberties Union v. Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), the Commission's record of sensitivity to First Amendment values in the area of issue advocacy was once described as "abysmal." See *National Committee for Impeachment*, *supra*, 469 F.2d at 1141-42 (Kaufman, C.J. concurring). And ever since then, non-partisan, issue-oriented groups like the ACLU, the National Organization for Women, the Chamber of Commerce, Right-to-Life Committees and many others, have had to defend themselves against charges that their public advocacy rendered them subject to all of the FECA's restrictions, regulations and controls. And the problem persists. See *Federal Election Commission v. Survival Education Fund*, 65 F.3d 285 (2d Cir. 1995) (holding, 2 to 1, that 1984 fund-raising mailings critical of President Reagan's foreign policies constituted a solicitation of a contribution subject to FECA requirements).

The kind of "chilling effect" that such enforcement authority generates in the core area of protected speech makes the strongest case against giving the Commission additional powers to tamper with First Amendment rights.

VI. Less Drastic Alternatives are available to deal with the problems of campaign funding.

After twenty years it is time, finally, to admit that limits on political funding do not work, constitutionally or politically. The Supreme Court won't allow limits on overall campaign expenditures, independent expenditures, or unlimited use of personal wealth by candidates—and rightly so. In the face of that, continuing to limit individual contributions to \$1,000, while outlawing PAC contributions, will insure that underfinanced candidates will be vulnerable to wealthy or well-funded opponents. Limits on funding will also ensure that underfunded candidates will lack the resources to respond to powerful issue groups or media voices that campaign against them totally outside the scope of the campaign laws and controls.

But constitutional imperative and political common sense can combine to help find a way out of the morass that campaign finance laws have caused.

The answer is to maximize political speech and activity, not by limiting those groups and individuals whose resources permit them to engage in speech and association, but by improving the ability of those who lack such resources to participate in the political process. That approach harmonizes free speech rights and expanded political opportunity without sacrificing the former in an illusory quest for the latter.

That is the path the framers of the First Amendment charted for us a long time ago. The First Amendment answer to bad or corrupt or overinflated or excessive speech is "more speech"—publicly and privately funded—rather than "enforced silence," coerced by law *Whitney v. California*, 274 U.S. 357, 377 (1927), Justice Brandeis Concurring.

The appropriate elements of this time-honored approach are clear.

First, *raise* individual contribution limits so that candidates can more easily fund their campaigns and be less reliant on PAC sources of support.

Second, could consider giving modest tax credits of up to \$500 for private political contributions. That would be the most straightforward kind of public financing of politics—through private contribution and choices. It's been done before and should be done again.

Third, the *public* has access to effective and timely disclosure of large contributions. That is the most appropriate and democratic remedy to deal with problems of undue access and influence on elected officials. Let the voters decide who's too cozy with the special interests.

Fourth, candidates could truly voluntarily limit their overall expenditures or forswear reliance on PAC contributions—as many have done—and then challenge their opponents to do likewise.

Finally, provide a variety of public subsidies and resources to facilitate candidacy and reduce the dependence on large private contributions. But do so with no strings attached. Do not condition the receipt of political subsidies on the surrender of First Amendment rights. First Amendment rights are not negotiable.

The ACLU recognizes that the escalating costs of campaigns for public office tends to restrict the breadth and freedom of political expression in America. More and more, money, not political support, determines who runs for office. Many candidates fail because they cannot attract the funds needed to finance a viable campaign. And that loss deprives the public of the full range of public debate.

For that reason, ACLU supports public financing of political campaigns as a substantial remedy for this problem and one which advances a number of positive free speech values. It would facilitate candidacy and significantly broaden the spectrum of campaign debate. Public financing can also reduce the dependency of candidates upon private and PAC contributions.

But public financing should follow these principles:

- It should provide floors or foundations upon which candidates can build their campaigns, not ceilings to limit them;
- It should be available to *all* legally qualified candidates who have demonstrated an objective measure of existing political support, and not just the to Democrats and Republicans;

- It should make public seed money or matching funds available, without unconstitutional conditions attached;
- It should provide the frank to all legally qualified federal candidates. That change alone would help level the playing field between incumbents and their challengers. No one is born an incumbent, remember what it was like to be a challenger; and
- Finally, though it raises serious First Amendment concerns, you might review the feasibility of providing candidates limited free air time, without strings attached, to help get their message across to the voters.

All of these approaches would have the collateral benefit of allowing candidates to spend less time raising money and more time raising issues.

All these strategies have one thing in common: they expand political opportunity without limiting political speech. We've never really tried that approach.

The bill before you does not do so. It imposes a total *ban* on PAC contributions and expenditures and seeks to coerce limits on candidate expenditures. Both of which will probably inure to the benefit of the incumbents writing these laws in the first place.

In this regard, I would note the special dangers that are raised when Congress writes campaign finance laws. One highly regarded scholar, Professor Cass Sunstein of the University of Chicago Law School, has put the matter boldly as follows:

Although I have criticized what the Court said in *Buckley*, considerable judicial suspicion of campaign finance limits is justified by a simple point: *Congressional support for such limits is especially likely to reflect congressional self-dealing.* Any system of campaign finance limits raises the special specter of governmental efforts to promote the interests of existing legislators. Indeed, it is hard to imagine other kinds of legislation posing similarly severe risks.

Professor Sunstein then lists seven reasons for particular concern.

1. Campaign finance limits may entrench incumbents.
2. Limits on individual contributions will produce more and more influential PAC's.
3. Limits on "hard" money encourage a shift to "soft money."
4. Limits on PAC's lead to an increase in individual expenditures.
5. Limits on PAC's can hurt organized labor and minority candidates.
6. Limits on PAC's may increase secret gifts.
7. Limits on both PAC's and contributions could hinder campaign activity.

To that list, I would add one more reason for concern:

8. "Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Thank you.

The CHAIRMAN. Thank you very much.

One of the objectives I have—and I hope I have the support of the committee as we go along in this hearing—is to take as many ideas as are out there for consideration and try and determine objectively: Can they pass the Federal court test, from the district court through the Supreme Court?

Now, some people will be in favor of some building blocks, some opposed, and it is going to be a lot of controversy as to the matrix, the building blocks that may or may not be finally put together by the Congress. But at least it would be helpful not only in the dialogue and debate within the Congress to determine, as starters, is this provision constitutional or is it not,

the best we can ascertain. Then the judgment is, is it or is it not in the interest of the individuals and collectively the two bodies of Congress a wise inclusion in a piece of legislation?

So as we go along, I would be very appreciative if you all would at a later date wish to submit your analysis of, say, 10 or a dozen or so principal concepts out there. And you may be in disagreement, but will they pass the Federal test in the separate branch of government, the judicial? Because I come back again to my opening comments. We have got to have an increased national dialogue so that there is increased public understanding on this issue. And we should provide the public who haven't got the resources that the Congress has to get the legal opinions from individuals such as yourself as to whether or not this building block is or is not subject to a court test and what the likely outcome would be.

Now, I would like to turn—each of you have touched on this, but with greater specificity to this question of the constitutionality of restricting the actions of independent organizations. We all know that runs a wide range of just little independents getting the encouragement of an active campaign manager here to get involved all the way to the other extreme where an independent organization really isn't interested in either candidate. Nevertheless, there is an issue in this particular campaign, whichever State or, indeed, nationally it may be, that is of vital interest to this organization. And, therefore, they feel that they have the right to speak out, no matter how it affects one or the other candidate.

So would each of you please address the constitutionality of restricting the actions of independent organizations, those who are not working at the behest of any candidate, but whose issue is one which aligns them with or against maybe a candidate, or whose activities might have a significant impact on the election? Let's just start then with Mr. Cox.

MR. COX. Mr. Chairman, forgive me, but I don't understand that the bill does limit spending by independent organizations.

THE CHAIRMAN. Well, all right. What restrictions do you think, if any, should be put on independent organizations and their ability to expend such sums as they wish for advertising or other means of advocating their position?

MR. COX. I think a limit on spending, outright limit, would be unconstitutional under *Buckley v. Valeo*.

THE CHAIRMAN. All right. That is clear.

President O'Neil?

MR. O'NEIL. I would certainly concur. It seems to me that the only exception that has been recognized is in the *Austin* case for what are really campaign contributions by independent organizations. And if you surround the *Austin* decision with the *Massachusetts Committee for Life* and several other cases, you have got a very small area in which even the contributions, direct contributions of independent organizations are restricted.

The CHAIRMAN. Good. Mr. Gora?

Mr. GORA. Yes, Senator. This bill would outlaw independent expenditures, and in that regard, I think there is virtual unanimity that it would be unconstitutional. It would also outlaw contributions by political groups to candidates. In that respect, I think there is a very strong case that it is unconstitutional. The Supreme Court has never upheld a total ban on contributions. Indeed, the one near-ban it had, it invalidated in the *California Rent Control* case. And I guess with respect to the so-called fall-back, once the courts knock out those provisions, the fall-back would limit the amount that political committees could contribute to the same as an individual could contribute, essentially \$1,000. That would be a closer call, I would think, as a constitutional matter. We think as a civil liberties matter that groups should be able to give to the candidates of their choice, period.

The CHAIRMAN. Well, I was prompted in the question by what I believe is a very astute observation that you had; that if somehow Congress or the courts or a combination thereof limit the ability for, say, the candidates to spend, that money could pop up over here with the independent organizations. And, indeed, if you had a fairly severe limitation on expenditure by candidates and no limitation on expenditure by independent organizations, the campaign literally is taken from these two candidates, and it is over here with State or national advocacy groups.

The candidates are obscured and they almost become bystanders in this heated debate.

Mr. GORA. Senator, in the immortal words of Yogi Berra, I feel like I am going through *deja vu* all over again, because 20 years ago, that was precisely what we predicted would happen, that if you tried to limit some speech, that it would just pop up somewhere else and you would not achieve equality of opportunity. You would achieve disparity of opportunity.

The CHAIRMAN. I thank this panel of distinguished witnesses very much. We will now turn to the next panel.

Senator MCCONNELL. Could I ask a question?

The CHAIRMAN. Excuse me. I beg your pardon, Senator.

Senator MCCONNELL. Professor Gora, in fact, the Supreme Court has said it is constitutionally impermissible to try to quantify speech or to dole it out, to try to equalize speech.

Mr. GORA. That is right.

Senator MCCONNELL. To say, Professor Gora, you get 15 minutes, and Professor Cox, you get 15 minutes, do not speak any more, that is the heart of this debate, is it not?

Mr. GORA. That is exactly right, and the Court said—

Senator MCCONNELL. And it is clearly a violation of the First Amendment to try to quantify speech.

Mr. GORA. And to try to limit someone's speech in order to relatively enhance someone else's speech. The Court said that concept was wholly foreign to the First Amendment.

Senator MCCONNELL. And Senator Warner has astutely pointed out that spending limits are like putting a rock on jello. To the extent that you somehow have an impact on speech over here, it pops up over here, because that is the bedrock of our democracy, is it not?

Mr. GORA. It is.

Senator MCCONNELL. I would like to ask each of you—are we in the middle of a vote?

The CHAIRMAN. No, no. That is undoubtedly for the joint session that is taking place. We can go into as many questions as you want. I did not mean to in any way limit your questions on this. I just want to make sure that we have the opportunity to hear the third panel before, by necessity, this hearing has to recess for a series of votes.

Senator MCCONNELL. Let me ask each of you, if I could, to tell me what a special interest is. That has sort of been the heart of this debate. I have been involved in this for 20 years, either teaching or as a practitioner of this field or as a member of the Senate in floor debate, and everybody says we need to do something about those special interests.

Professor Cox, what is a special interest? What is a special interest?

Mr. COX. I did not quite hear you.

Senator MCCONNELL. What is a special interest, in your opinion?

Mr. COX. Special interest varies. The degree of specialization may vary. It may be a particular producer of various manufactured goods or agricultural goods. It may be trial lawyers. It may be medical interests. It may be tobacco interests. All those are specific and, in that sense, special interests.

May I say that I fear that my answer to Senator Warner was understood differently than I meant it. When I said that I thought it violated *Buckley v. Valeo* to forbid third party independent expenditures of an organization, I meant literally to regulate expenditures. I did not mean to say anything about contributions. I did not mean to say anything about public funding, which was spending on the other side, things that might be taken to qualify the benefit of the spending. I was talking strictly, as the Supreme Court has, about the act of spending the money for speech. I just wish the record to be entirely clear. I do not mean to waste your time.

Senator MCCONNELL. Mr. O'Neil, what do you think a special interest is?

Mr. O'NEIL. I suspect it is a bit like Justice Stewart's remark about obscenity: "I know it when I see it, but I have never been able to define it." I learned a good bit about special interests from my daughter, who spent a very happy summer as an intern in

Senator Warner's office some years ago and during the course of that summer was exposed to a great many special interests.

It is a term I guess we use pejoratively to apply to an organization or cause that we are not sure we like, but then we have to admit that we are, all of us at various times, associated with and support special interests. I am not sure I can do any better than that.

Senator MCCONNELL. Professor Gora?

Mr. GORA. I cannot do much better than Professor O'Neil. I think that is about right. A special interest, I think, is the person on the other side of the table from you.

Senator MCCONNELL. Yes. In fact, the Constitution does not distinguish between special interests and non-special interests, if there were such an animal, does it?

Mr. GORA. The Constitution is available to everybody, special interest or not.

Senator MCCONNELL. And that is really at the heart of this debate, the ability of people to speak in the political process. It has been interesting to observe over the years the efforts of those with a particular political point of view to diminish or snuff out the speech of those they consider special interests in order to enhance, of course, their own speech, and that is at the core of this debate and therefore makes this whole effort, as Professor Gora pointed out, constitutionally suspect.

Mr. Chairman, I think that is probably all I am going to do.

The CHAIRMAN. That is fine, but I would like to observe on your last point, if it were the desire of the Congress in any way to legislate on the special interest issue, you would have to provide a definition, would you not?

Senator MCCONNELL. Absolutely.

The CHAIRMAN. We would be faced with the, was it overt or dictum or direct opinion of Justice Stewart in that case? I do not know. Do you remember?

Mr. O'NEIL. I am not sure it was either. It was simply a casual observation which is probably more memorable than almost anything else he wrote.

Senator MCCONNELL. If I could just make one other quick observation, the other thing that is always said in this debate is they want to level the playing field, level the playing field. Professor Gora, how could the Constitution, the First Amendment, allow the government to level the playing field, to diminish some voices and thereby enhance others?

Mr. GORA. I think that is the point, Senator. The Constitution, and particularly the First Amendment, is really fundamentally inconsistent with that concept.

Senator MCCONNELL. It is inconsistent with it, right.

Mr. GORA. It is really up to people to decide how much speech is appropriate, not for the government to decide.

The CHAIRMAN. Just in conclusion, I do want to make available to the committee every bit of knowledge that you all

think is important to the research and analysis of this issue. So as I write each of you expressing appreciation for your appearance today, I am going to ask you to provide the committee with, say, a dozen sources of material or articles or some number that you felt were a very constructive and balanced analysis of these very difficult issues right here. We need to build up a bibliography as a part of our record of what our witnesses and others regard as valuable sources of research in this field.

Senator MCCONNELL. Mr. Chairman, could I just make one other quick observation?

The CHAIRMAN. Yes.

Senator MCCONNELL. The previous panel, most of whom testified left, a number of them mentioned the problem of the wealthy candidate, as if that were more common today than it used to be. I am not certain that is the case. But I think it is important to note that none of the bills that have been introduced would do anything about that because you cannot constitutionally do anything about it.

And secondly, for those who are not fond of that, and I am certainly not fond of it, I mean, it is not something I would relish, going up against somebody with lots of money, but the good news is most of them lose. In virtually all of the races that were cited here today, virtually all of the individuals who were cited did not succeed.

So I think in a democracy, people can kind of sort all this out. There was reference made to the election Tuesday in Oregon in which the candidate on my side of the aisle happened to have had a substantial amount of money and used some of it. He did not win.

We will see what happens to Steve Forbes, that everybody is sort of scratching their head about wondering whether the Presidency is for sale. We will see what happens, but if I were a betting man, I would be he is not going to be in the White House.

It is important to remember that it is not possible legislatively to do anything about that. That is a core First Amendment freedom. I am not crazy about it. There are some other things, by the way, that the First Amendment allows that I am not crazy about, but it is a core Free Speech issue.

Thank you, Mr. Chairman.

The CHAIRMAN. If I might just make a reference here, because I think we have to bring to bear on this issue the experiences each of us have had, and on that last point, I would like to address my first election to the United States Senate.

I had participated in preliminary contests with three other individuals, making a total of four candidates for the nomination. It was in the nature of a primary in the sense we debated very widely for months all along the campaign trail. It was finally resolved in a convention and resolved, in my judgment, in a very fair manner.

The convention selected from the four an extremely fine, honorable individual to bear the banner for the Republican party. Tragedy hit that individual. He lost his life in an air crash. A finer man, we have never seen on the entire scene of Virginia politics and I would say national politics.

The party then turned to me with the matter of just 11 weeks before the election, and that was quite a challenge. That is the only time in my political career that I have ever contributed of my own funds, but I had no alternative. First, I had little time in which to raise money because I had a very active candidate opposing me, the former Attorney General of the Commonwealth of Virginia, a very fine individual, and I had to immediately begin to pick up the many obligations that had been scheduled for the Republican candidate.

I just point out there are instances—and, I might add, I have never contributed nor will I ever contribute my funds again to a campaign—but there are instances in which there may be some justification by expenditure of a candidate of his own personal funds and I have always felt that was one, but I wanted to make that clear for the record.

Thank you very much. We will now have our next panel.

The CHAIRMAN. We have Bradley Smith, Assistant Professor of Law, Capital University Law School, Columbus Ohio; David Mason, Vice President of Government Relations, Heritage Foundation; Ann McBride, President, Common Cause; and Joan Claybrook, President, Public Citizen.

My colleague and I have discussed the time that remains between now and when the Senate turns to votes. Therefore, we ask each of you in your direct presentation to limit it to 10 minutes. I will ask the clerk behind me to time that and inform the chair. Then there will be adequate time for myself, my colleague from Kentucky, and such other Senators who may join to have a question period.

I wish to note, since this hearing is being recorded publicly, that it was the decision of the chair that the importance of this hearing and the timing was such that we went ahead even though there is a joint session of the Congress going on right now. But there are so few days in which we can get the time that I think is required for this very important subject, we went ahead with it, and that would explain in large measure the absence of a number of Senators here this morning from this hearing. I think otherwise they would be present.

We will lead off with Professor Smith.

TESTIMONY OF A PANEL CONSISTING OF BRADLEY A. SMITH, ASSISTANT LAW PROFESSOR, CAPITAL UNIVERSITY LAW SCHOOL, COLUMBUS, OH, ON BEHALF OF THE CATO INSTITUTE; DAVID M. MASON, VICE PRESIDENT OF GOVERNMENT RELATIONS, HERITAGE FOUNDATION, WASHINGTON, DC; ANN McBRIDE, PRESIDENT, COMMON CAUSE, WASHINGTON, DC; AND JOAN B. CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, WASHINGTON, DC

Mr. SMITH. Thank you, Mr. Chairman and Senator McConnell for inviting me to testify today.

It is hard to talk about campaign finance today because the discussion is dominated by myths. I am going to predict that Ms. Claybrook is going to tell you that these things are not myths because the public believes them. What I would suggest is that the definition of a myth is something that the public believes which is not supported by fact.

The most pernicious of these myths is that too much money is spent on campaigning. Total direct candidate spending on all House and Senate races in the last election cycle was less than \$4 per eligible voter. The total cost of the 1992 Presidential general election was only slightly more than the amount spent last year to promote television reruns of the comedy "Seinfeld", arguably more amusing but certainly no more important. Yet current proposals in Congress, including S. 1219, all operate on the assumption that spending must be reduced and that speech must be limited.

We should note that among the negative consequences of reduced campaign spending is that speech and information to voters is limited. There is substantial evidence that increased spending on television advertising increases the electorate's interest in and knowledge of the issues in a campaign.

In last year's gubernatorial race in Kentucky, the first under State spending restrictions, we found that candidates were also less likely to visit small cities and outlying areas due to limited travel budgets.

Furthermore, limits on campaign spending benefit incumbents. Numerous studies have shown that for challengers to have a chance to win, they must reach a threshold level of spending. Spending limits are subject to manipulation that sets the spending maximum just below the amount that the challenger must spend to have a legitimate chance to defeat an incumbent.

For example, in 1994, only two Senate incumbents were defeated. In each case, the successful challenger spent more than would be allowed under S. 1219. Overall in 1994, every Senate challenger who spent less than the ceiling set in S. 1219 lost, but

every Senate incumbent who spent less than the ceiling in S. 1219 won.

A second myth of campaign finance reform is that maximum contributions to candidates and parties must be further limited. In fact, contribution limits, like spending limits, inherently favor incumbents. It is easier for incumbents with high name recognition and a contributor data base from past elections to raise money in small amounts. In addition, incumbents are able to raise money over the course of their entire term in office, which most challengers are not.

Historically, challengers rely on a small number of large contributors to provide seed capital for a campaign. Contribution limits have restricted the ability of challengers to raise this seed capital. Thus, a second result of contribution limits is that successful challengers of necessity increasingly come from the ranks of wealthy individuals who are capable of providing seed capital to their own campaigns.

A third problem with contribution limits is that they force candidates to devote more time to fundraising activities. The \$1,000 contribution limit established in 1974, had it kept pace with inflation, would today be worth more than \$3,000. At a minimum, this contribution limit should be raised to \$3,5000 and indexed for inflation.

A third myth of campaign finance reform is that political action committees should be limited. Contrary to this myth, PAC's play a beneficial role by giving average citizens a voice. Approximately 12 million Americans make their political contributions through PAC's at an average of about \$12 per month. PAC's are a major source for small contributions into the political system.

Yet a fourth area in which it is commonly assumed that we need more regulation is that concerning soft money. Again, this assumption is mistaken. Soft money, in fact, is in many respects preferable to direct candidate contributions and spending. Because it flows to the party rather than the candidate, soft money removes any perception of quid pro quo arrangements. It allows parties to channel resources into close races, thus making for more competitive politics and giving voters more choices.

Furthermore, a candidate who receives support from the party owes greater allegiance to the party. This has two significant benefits. It increases party discipline, which helps support a national agenda, such as the Contract With America, and it makes party labels of greater value to voters, helping voters to hold one party or another accountable for political and economic trends, thereby promoting party government and an end to gridlock.

Rather than limiting soft money contributions, Congress should be looking to remove some of the current restrictions on the use of soft money.

As with efforts to limit soft money, limits on out-of-district contributions make lawmakers more reliant on locally-dominant special interests, destroying national party agendas and creating legislative inertia. With full disclosure, voters can know the sources of candidate financial support. Those candidates who seek to raise their opponents' out-of-State contributions as an issue and those voters who view such contributions negatively can then campaign and vote accordingly.

The bills now before Congress, including S. 1219, would further entrench incumbents, adding to the type of voter frustration manifested in the crusade for term limits. They would favor wealthy candidates over others, adding to the public perception that Congress has become a rest home for millionaires. They do nothing to address the low contribution limits which force candidates to spend inordinate time raising funds, an activity with the public views with distaste. They work against responsible party government, which has led to gridlock and voter frustration. And they stifle further grassroots political involvement through restrictions on PAC's, soft money, and general information to the public.

While voters may initially applaud any action that passes under the name of reform, when these consequences are felt, the public is going to respond with a new and greater wave of anger and cynicism.

Congress needs to see through the various myths of campaign finance reform and reverse course, loosening the grip of campaign finance regulation so that seed money is available to challengers, so that challengers can run competitive races, so that candidates are relieved from the constant obligation to raise funds, so that grassroots activity is not inhibited by government regulation, and so that responsible political parties can provide voters with meaningful choices. Thank you.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF BRADLEY A. SMITH, ASSISTANT PROFESSOR OF
LAW, CAPITAL UNIVERSITY LAW SCHOOL, COLUMBUS, OH

Thank you Mr. Chairman and Members of the Committee for inviting me to testify before you today.

In recent years, it has become increasingly difficult to discuss meaningful campaign finance reform. This is because both public and congressional opinion has become trapped in a box. This box is the conscious creation of groups such as Common Cause, which for 25 years have worked tirelessly to convince the American public that the members of this Committee, and indeed all of Congress, are corrupt bribe-takers, and that the public itself consists of innocent dupes incapable of making intelligent voting decisions based on the information presented to them. By constantly drawing simplistic correlations to financial support and voting records, and by conflating the issue of campaign finance reform with other issues of voter concern, such as lobby reform, negative campaigning, and legislative gridlock, these groups have purposely attempted to create a climate of public opinion in which certain assumptions are not to be challenged. However, the failure to challenge these assumptions has locked Congress into a box in which it seems unable to move beyond the very concepts that have led to such public disgust with the campaign finance system.

Now is the time to get out of the box. Congress must realize that "reforms" which are based on faulty assumptions, and so which serve only to further depress electoral competition, cut off grassroots involvement, and decrease the flow of information to voters, will, in the end, only increase voter cynicism.

The most pernicious myth about campaign finance is that too much money is spent on campaigning. According to economist Robert Samuelson, campaign spending has remained constant over the past decade, at a minuscule .05 percent of gross national product. In fact, as I have recently pointed out in articles for the Cato Institute and in the Yale Law Journal, total direct candidate spending on all House and Senate races in the 1993-94 election cycle was less than \$4 per eligible voter. This is considerably less than Americans spend on such "essentials" as potato chips or yogurt. In modern society, it costs money to communicate. Political communication is no different. The total cost of Michael Huffington's much-criticized 1994 campaign for the Senate was approximately the same amount spent by Sony Music International to promote Michael Jackson's latest album. The total costs of the 1992 presidential general election are only slightly higher than the amount spent last year to promote reruns of the television comedy "Seinfeld." Though "Seinfeld" may be more entertaining, it hardly seems more important or worthy of public attention than the selection of a president.

Yet current proposals in Congress, including S. 1219, operate on the assumption that spending must be reduced. S. 1219 seeks to reduce spending to a rather arbitrary limit of approximately forty cents per eligible voter. In the 1993-94 election cycle, 47 of 66 candidates for the U.S. Senate spent more than the maximum allowed by S. 1219.

Unfortunately, there are significant negative consequences to efforts to reduce campaign spending. First, it cuts off the flow of information to voters. Even Fred Wertheimer, the long-time president of Common Cause and an outspoken proponent of spending limitations, recognized in a 1981 article that increased spending on television advertising increased the electorate's interest, and knowledge of the issues, in the campaign. News reports from this year's gubernatorial race in Kentucky, the first under strict state level spending restrictions, indicate that candidates were less likely to visit small cities and outlying areas due to limited travel budgets.

Furthermore, spending limits can actually increase the negativity of political campaigning. Negative campaigns are most effective when an opponent cannot respond, and spending limits may restrict an opponent's ability to respond. Exactly such a scenario happened last year in Kentucky, where a late barrage of negative ads by Paul Patton helped to defeat Larry Forgy. High campaign spending has no connection to the negativity of a campaign, and efforts by some to link negative advertising to allegedly high levels of campaign spending are fundamentally dishonest.

Most importantly, limits on campaign spending tend to benefit incumbents. Incumbents start with significant advantages in name recognition. The value of incumbency has been estimated by some to be as much as \$2 million dollars. Thus, any system that attempts to limit campaign spending locks in this incumbent advantage. Additionally, numerous studies have shown that for challengers to have a chance to win, they must reach a threshold level of spending. Congressional spending limits are subject to manipulation that sets the spending threshold just below the amount that the challenger must spend to have a legitimate shot at defeating an incumbent. For example, in 1994, only two Senate incumbents were defeated. In each case, the successful challenger spent more than would be allowed under S. 1219. The next two closest challengers also spent more than the limits provided for in S. 1219. The spending limits proposed in S. 1219 would have worked to the incumbent's advantage in each case. Overall, every 1994 Senate challenger who spent less than the ceiling set in S. 1219 lost; every incumbent who spent less than that ceiling, won.

A second myth of campaign finance reform is that maximum contributions to candidates and parties must be limited. In fact, the federal contribution limits which were passed into law in 1974 have had a variety of negative consequences.

First, contribution limits, like spending limits, are inherently biased in favor of incumbents. This is because it is easier for incumbents, with high name recogni-

tion and a contributor data base from past elections, to raise money in small amounts. In addition, incumbents are able to raise money over the course of their term in office, which challengers generally are not. Historically, most challengers must rely on a small number of large contributors to launch a campaign. This initial "seed capital" is necessary for challengers to become known to voters so that they can then run an effective campaign. The contribution limits of the 1974 amendments to FECA have limited the ability of challengers to raise seed capital. Thus a second result of contribution limits is that successful challengers, of necessity, increasingly come from the ranks of wealthy individuals who are capable of providing seed capital to their own campaigns.

A third problem with contribution limits is that candidates, both challengers and incumbents, must devote more time to fund raising activities. This is because each donor's contribution is limited. In fact, the \$1000 contribution limit established by FECA in 1974, had it kept pace with inflation, would be worth approximately \$3000 today. Contribution limits are a significant contributing factor to the drain that fund-raising takes on a Senator's time.

At a minimum, the existing \$1000 contribution limit should be raised to \$3000 and indexed for inflation. This would help to even the playing field between challengers and incumbents, reduce the emphasis on a candidate's personal wealth, and reduce the time incumbents need to spend raising campaign contributions. Unfortunately, the proposals before Congress, including S. 1219, do nothing to address this problem.

A third myth of campaign finance reform is that Political Action Committees, or PAC's, must be limited. To put PAC spending in perspective, total PAC spending on 1994 Senate and House races was approximately \$189 million, or less than one-third of total spending and approximately the same amount as was spent to make the Kevin Costner movie, "Waterworld." Contrary to popular myth, PAC's can play a beneficial role in giving average citizens a voice. Approximately 12 million Americans give to PAC's, often in small amounts. These small checks, given individually to a campaign, would quickly disappear. However, when contributed to a PAC, these contributions are passed on to the candidate with a clear message. PAC's then help these small contributors to monitor the activities of their representatives, passing information on to their contributors.

Yet a fourth area which it is commonly assumed must be more heavily regulated is what has become known as "soft money," or contributions to parties for generic campaign activity, voter registration, and similar uses. Again, this assumption is mistaken. Soft money, indeed, is in many respects preferable to direct candidate contributions and spending. Soft money, because it flows to the party rather than the candidate, removes any taint of quid pro quo arrangements between legislators and contributors. Because parties can then channel their resources into close races, it can make for more competitive politics, giving voters more choices. Furthermore, a candidate who receives support from the party owes greater allegiance to the party. This has two significant benefits: it increases party discipline, which helps support a national agenda such as the Republicans' 1994 "Contract With America;" and, correspondingly, it makes party labels of greater value to voters, helping voters to hold one party or another accountable for political and economic trends, thereby promoting party government and an end to "gridlock." Rather than limiting soft-money contributions, Congress should be looking to remove some of the current restrictions on the use of soft money.

As with efforts to limit soft money, efforts to limit out-of-district contributions are likely only to make lawmakers more reliant on locally dominant special interests, destroying party agendas and creating legislative inertia. With full disclosure, voters can know the sources of candidate financial support: those candidates who seek to raise it as an issue, and those voters who view out-of-district contributions negatively, may then campaign and vote accordingly.

Finally, I have been asked to say a few words on the Presidential campaign system as it has existed since 1976. Of course, limits on contributions and spending in the presidential campaign have the same types of detrimental effects, described above, as such limits do on congressional campaigns. However, the presidential system suffers from several other ills which ought to be addressed,

and which should serve as a warning for those who propose public financing of congressional elections.

First, federal funding of presidential campaigns results in millions of federal dollars being funnelled to extremist candidates who are anathema to the taxpayers asked to foot the bill. In 1992 alone, Lenore Fulani, of the ultra-left wing New Alliance Party, received over \$2 million in matching funds; Lyndon LaRouche, though in prison, qualified for over \$500,000; and the Natural Law Party's John Hagelin, running on a platform calling for more transcendental meditation, received over \$350,000.

Second, the primary election matching fund formula assists most those candidates whose average qualifying contribution is highest. For example, the average qualifying contribution in 1992 to LaRouche was \$179, meaning for each such contribution he qualified for \$179 in taxpayer funds. Bill Clinton's average qualifying contribution, however, was just \$75, and George Bush's just \$76. Thus, for each qualifying contribution, LaRouche received more than twice as many tax dollars as Clinton or Bush.

Third, the presidential system's bizarre state by state limits on primary spending are simply inadequate. These limits, for example, have forced some candidates to ridiculous measures such as renting cars in Massachusetts for use campaigning in New Hampshire, thus helping to keep costs within the New Hampshire limit. Clearly, campaigns should be able to use their resources as they see fit.

Finally, the public is increasingly unwilling to pay for federal presidential campaigns. Taxpayer participation in the check-off program has been declining for many years, dropping from 28.7 percent in 1981 to just 14.2 percent in 1994. Despite raising the taxpayer check-off from \$1 to \$3 in 1993, the Fund has been forced to delay some scheduled payments this year.

In short, many of the problems with the campaign finance system can be laid directly at the feet of the 1974 FECA amendments. Yet the reforms presently under consideration, rather than correcting those errors, simply add a new layer of regulation which actually compounds those errors.

The bills now before Congress, including S. 1219, would further entrench incumbents, adding to the type of voter frustration manifested in the crusade for term limits; they would favor still further wealthy candidates over others, adding to the public perception that Congress has become a rest home for millionaires; they do nothing to address low contribution limits which force candidates to spend inordinate time raising funds, an activity which the public views with distaste; they work against responsible party government, which has led to gridlock, voter disgruntlement, and, most alarmingly, voter disengagement; and they further stifle grassroots political involvement through misguided restrictions on PAC's and soft money. While voters may initially applaud any action that passes under the name of "reform," when these consequences are felt the public will only respond with a new, greater wave of anger and cynicism.

Congress has allowed itself to be tarred as a thoroughly corrupt institution in which Senators and Congressmen have no convictions beyond the next campaign contribution. But the solutions to the ensuing public anger do not lie with the facile proposals of those who have done the tarring. Rather, Congress needs to break out of the box, and challenge the assumptions that led to the disastrous 1974 FECA amendments. Congress needs to reverse course, and loosen the grip of campaign finance regulation so that seed money is available to challengers, so that challengers can run competitive races, so that candidates are relieved from the constant obligation to raise funds, so that grassroots activity is not inhibited by government regulation, and so that responsible political parties can provide voters with meaningful choices.

Senator MCCONNELL. [Presiding.] Thanks, Professor Smith.
Mr. Mason?

TESTIMONY OF DAVID M. MASON, THE HERITAGE
FOUNDATION, WASHINGTON, DC

Mr. MASON. Thank you, Senator McConnell. Though he is not here now, I especially want to thank Senator Warner, who was my first boss in politics on that first campaign that he mentioned here in the Senate, though I will not hold him personally responsible for my views on campaign finance, which have been developed largely since that time.

I agree with most of what Brad Smith had to say about the role of money in politics, the inadvisability of trying to put limits in these areas, and we perhaps have a big task in talking to people about these problems and trying to get that message across. You, Senator McConnell, have done a lot of that already and I think you need to continue.

But as Brad pointed out, there is strong evidence to indicate that the more money you have in campaigns, the better challengers do, number one, and the better informed and more active voters tend to be, number two. So while there are certainly problems related to money in politics and particularly the channels that it flows through, the attempt to limit overall campaign spending, I think, is ill founded.

Secondly, the problems in campaigns extend far beyond the financing system and if we take a route that simply addresses financing and, in fact, addresses it in a very complex way in S. 1219, I think people are going to be bitterly disappointed, because as many of us have predicted, the finance problems will not be fixed, it will create new problems, and the amount of distrust and cynicism in the political system will not change very much and people will say, well, it is worse than ever. Passing this sort of thing could actually take you backwards.

Thirdly, in terms of the committee's overall approach, because of this lack of consensus and because of the many different groups who have a stake in here, a comprehensive bill like S. 1219 is unlikely to pass. It did not work the last 20 years. I do not think it is going to work this year.

I do think there are some things the committee might be able to do, small steps in the disclosure area, for instance, that could be done a piece at a time, and if you could step back and take that approach, you might be able to accomplish quite a bit over two or three or four years or two or three or four Congresses, whereas we have accomplished nothing for 20 years with the all-or-nothing approach.

I would like to talk about a couple of the areas that S. 1219 in particular would try to address and the first is more regulation. This is a classic case. You could take it to the George Mason Economics Department or a lot of other places.

We have a set of problems that were largely created by government regulation—independent expenditures, bundling,

soft money. The PAC problem was created by the differential between PAC and individual donations, and we are now getting to a point where we are proposing more new regulations to fix the problem with the old regulations. We look in other areas of the economy, in communications, in transportation, and in financial services and we realize that does not work. We are not going to be able to fine-tune, even leaving aside these very, very important and critical issues about the First Amendment.

The government in Washington just is not smart enough to impose a one-size-fits-all system on campaigns and say that a Congressional campaign in urban New York is going to have the same kind of spending limits and the same pattern of television advertising and so on like that as a campaign in rural Kentucky. It just does not work and it is foolish to try.

Furthermore, we are talking about the regulation of a very fundamental political right, and in terms of things like grassroots activity, the biggest barrier to grassroots activity today is the existing regime of regulations under the FEC. Individual citizens and grassroots groups are afraid to do things. You ought to talk to Judge James Buckley, for instance, who is eloquent about his experience in his early campaigns versus the campaigns under regulation, where in the first campaigns, he had a lot of grassroots activity.

Brad talked about spending limits and I would echo his conclusion that the spending limits are set with almost diabolical accuracy to cut off challengers at the point where they become most competitive. For instance, in 1992, House challengers had a 50-50 chance of defeating incumbents if they spent over \$600,000, and that is the limit that has been proposed in the House bill. It came down a little bit in 1994, but the fundamental truth is still that spending limits hurt challengers.

Public financing and subsidies are terribly unpopular, as Senator Warner pointed out, and S. 1219 really has a set of back-door public financing and subsidies that are not substantially any different than taking it directly out of the taxpayer's pocket.

I think it is suspect to pile on the broadcasters, to expect them to pay, to provide free money, as it were. Aside from the regulatory hook that you have, this is supposedly a government-owned spectrum, it is a declining share of the video market. Cable is getting bigger and bigger. Broadcast is declining. So if you try to levy this huge tax on the broadcast station owners as their market share is going down, it is going to be an ineffective way of trying to run campaigns because people will watch broadcast TV less and less.

People are going to pay for this one way or the other. For instance, in the area of postal subsidies, either postal rates for other mailers are going to go up, which is essentially broad-based tax increase, or you are going to have worse postal service. There is no free lunch in this area. S. 1219 tries to present

a free lunch by off-loading the bill for public financing on broadcasters and the postal service. I think you ought to reject that.

One aspect that is not in S. 1219 that was addressed before is that of union activity, and I would like to underline that again. Senator McConnell quoted the work of my Heritage colleague Marshall Wittmann. It is curious to me that in this bill, there are proposals to limit what individual contributors can do, what political parties can do, what campaigns can do, what corporations can do, just about every actor except for labor unions.

We are faced with a situation where labor unions are newly vigorous, promise to spend new money and showing evidence that they are going to do that, and that is fine and within their rights, but if we are going to limit all of these other political actors and leave the unions alone and largely unregulated and, furthermore, funded with mandatory dues that workers do not have a choice about paying, I think you are setting up a fundamentally unequal situation and you ought to avoid that.

One area in which I disagree with Brad a little bit is about what you might do instead, and I would point you over to the House, the bill that is introduced by Representative Wamp, H.R. 2148, broadly cosponsored, about 61 House members. It would equalize the PAC and individual donation limits at \$2,000 and it would require 50 percent of funds to be raised in-district.

I am not too worried about that as a new regulation, but I think that would get at a couple of the specific aspects that people are concerned about, that is, the disproportionate influence of PAC's and out-of-State money, but it would do it in such a way that it would not violate constitutional principles or place undue regulatory burdens on campaigns. That is the kind of compromise that I would be willing to make to try to address people's legitimate concerns in this area without creating too much new regulation or constitutional problems. Thank you.

[The prepared statement of Mr. Mason follows:]

PREPARED STATEMENT OF DAVID M. MASON, VICE PRESIDENT,
GOVERNMENT RELATIONS, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mandating a Free Lunch: Why Campaign Finance "Reform" Won't Work

I would like to thank the Committee for the opportunity to present my views on campaign finance reform, and especially to thank my mentor, the Chairman, and to congratulate him on his new position, though I am sure he views it as a mixed blessing.

I will offer a couple of points about the overall political context and then comment specifically on some of the proposals before this committee, and on other suggestions for campaign finance regulation.

- Problems facing our political system extend far beyond methods of financing campaigns. Declining voter turn-out, negative campaigning, and the seeming inability of Washington to translate citizens preferences into sensible policies will not be solved by new fundraising regulations. Those who put the greatest store in changing financing schemes will be most disappointed by their predictable failure.

A money-only solution could well lead to even greater cynicism and political dissatisfaction.

- Too much money is not the problem in campaigns. Comparisons made by George Will and others of campaign spending to advertising budgets for consumer products highlights what systematic research shows clearly: more money produces more competitive campaigns, and better informed voters. Fundraising limits, restrictions and regulations of almost any type disproportionately hinder the kind of non-traditional outsider candidates reformers claim to favor.
- The lack of consensus about the root of the problem with campaigns and politics makes a sweeping reform bill unlikely to succeed. Instead, this Committee should consider incremental reforms, preferably in a deregulatory direction, which might accomplish some good this year, rather than pursuing an all-or-nothing strategy which has failed for the last twenty years.

Background

The Watergate Affair prompted a major overhaul of the nations campaign finance laws. Congress reacted to revelations of large, unreported corporate and individual donations to the Committee to Re-Elect the President in the 1972 campaign by imposing low contribution limits and requiring disclosure of donations and spending. The 1974 law (the Federal Election Campaign Act or FECA) established public financing for presidential campaigns, and created the Federal Election Commission.

In the 1976 *Buckley v. Valeo* case, the Supreme Court ruled that the FECAs overall spending limits on House and Senate races, and its limits on the amount of his own money that a candidate can spend, violated the First Amendment. The court also ruled that limits on contributions to campaigns could not be so low that they prevented candidates from gathering the funds necessary for an effective campaign.

Though advertised as an effort to clean up politics and reduce the role of money and special interests in campaigns, the FECA backfired. Campaign spending rose rapidly, with special interest contributions increasing most quickly of all. The volume of money, along with fundraising practices required by the contribution limits, led to new complaints about campaign practices. Special interest giving was driven by the FECAs distinction between donation limits for individuals (\$1,000 per campaign) and those for political action committees (PAC's) (\$5,000 per campaign).

During the same period, incumbent re-election rates rose to new heights, driven in part by fundraising difficulties faced by challengers under the FECA.

Failed Reform Proposals

In recent years, liberal groups and politicians have pushed reform proposals which have relied on various combinations of public financing, spending limits and new regulations on political donations and spending. Individually, each of these ideas are bad, and the combination is disastrous. The McCain-Feingold-Thompson bill, S. 1219, is simply another version of the same brew, with confiscatory mandates on broadcasters and the postal service replacing direct taxpayer subsidies for politicians.

S. 1219 would require Senate candidates to raise 60 percent of their funds from individuals in candidates home state. Candidates would not be able to use personal funds to finance a campaign in excess of 10 percent of the general election spending limit, or \$250,000—whichever is higher. PAC's would be banned by the bill, but recognizing that the ban is likely to be found unconstitutional, a fall-back provision specifies that contributions from PAC's would be limited to the amount individuals are entitled to donate.

Spending limits would be set by a formula based on state population, ranging from \$1.5 to \$8.2 million. In return for accepting the limits, candidates would be entitled to 30 free minutes of broadcast time within the state or an adjacent state, steep discounts for additional paid advertising and reduced postal rates.

More regulation. Fundamentally, S. 1219 is an attempt to fix a set of problems created by ill-designed government regulations by leaving those regulations in place, and adding more new regulations. In every other area of the economy we have come to a consensus that attempted government fine-tuning is a bad idea because it simply doesn't work: communications, finance, transportation, energy.

Under S. 1219, government regulation of political activity would be vastly increased—the bill is a complex 59 pages—and the fundamental exercise of self-government subject to the whims of Washington bureaucrats. Most of the ills of the current campaign finance system are the direct result of Watergate-era regulations, and adding several new layers of red tape is unlikely to make the political system any more healthy. In fact, if regulation is further increased, political activism and donations will likely be channeled into less accountable areas.

Spending limits. The centerpiece of liberal reform proposals is an effort to limit the amount of money spent on campaigns. This ignores the overwhelming body of evidence indicating that increased challenger spending is the main factor in increasing the competitiveness of elections. In fact, as long as challengers can reach a threshold spending level (about \$400,000 in the 1994 House elections) they can run competitive campaigns.

Contrary to claims, spending limits do not level the playing field or increase the fairness of elections. Spending limits hinder challengers by making fundraising more complex and because they fail to account for the innate advantages of incumbency.

Public financing and subsidies. Because the First Amendment prohibits mandatory campaign spending limits, spending limit proposals are linked with various subsidies designed to induce campaigns to comply with the limits. Presidential candidates receive dollar-for-dollar matching funds for small primary contributions in return for accepting spending limits, and general election campaigns are funded wholly by taxpayers. Contributions through the voluntary tax check-off for presidential campaigns on individual income tax returns have plummeted from 29 percent in 1980 to 17 percent in 1991,¹ a clear indication of public displeasure with public financing.

In fact, the realities of Ross Perot and Steve Forbes demand that you re-examine the presidential spending limits, rather than extending a related system to House and Senate campaigns.

A presidential-type system would be too expensive for congressional campaigns, and direct public financing is so unpopular that most proposals now rely on indirect subsidies, including free and reduced-cost broadcast advertising (exacted by the government as a condition on radio and television station licenses) and reduced postal rates.

Subsidies of this sort are simply efforts to hide the reality of public funding: they still amount to welfare for politicians, and someone else (postal customers, broadcasters or other disfavored groups) pays the bill. Further, if the subsidies are sufficiently attractive (or coercive) they, too many run afoul of the First Amendment as effectively violating the free speech rights of non-complying candidates.

Limits on non-campaign political activity. The liberal reform package also includes new limits and regulations on the activities of political parties and interest groups. Though targeted against perceived abuses and loopholes, regulations of this sort have the effect of limiting the ability of citizens to participate in political campaigns and debates. Some of the areas of proposed new restrictions include:

- **Soft Money.** These are funds donated to political parties for voter registration and get-out-the-vote efforts on behalf of all of a party's candidates, rather than to benefit any single candidate. This spending, which is now largely unregulated has increased dramatically in

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Dave Mason, Steve Schwalm, "Advantage Incumbents: Clinton's Campaign Finance Proposal," Heritage Foundation *Background* #945, June 11, 1993, p. 13.

recent years, largely in reaction to restrictive campaign donation limits. Many proposals would attempt to ban soft money.

- **Bundling.** To increase their leverage and clout, like-minded citizens have begun to package separate individual contribution checks in a large "bundle." Though obviously intended to skirt contribution limits, this sort of cooperative activity is arguably protected by the first amendment.
- **Independent Expenditures.** Groups of various political outlooks sometimes buy advertising or make other electoral efforts on behalf of or in opposition to a particular candidate. As long as groups do not "coordinate" their actions with any campaign, they are legal and largely protected by the first amendment. Liberal reform proposals often seek stricter regulation of independent expenditures and propose to provide subsidies or regulatory favors to candidates to offset such spending.

New regulations are only likely to drive political spending into even less desirable and accountable channels, as long as, thankfully, the first amendment protects the fundamental right of citizens to participate vigorously in the political process. While spending limits, public financing and restrictions on independent political activity are all bad ideas, their combination, as proposed in many comprehensive election reform proposals, is particularly poisonous. Government regulation of political activity would be vastly increased, and the fundamental exercise of self-government subject to the whims of Washington bureaucrats. Most of the ills of the current campaign finance system are the direct result of Watergate-era regulations, and adding several new layers of red tape is unlikely to make the political system any more healthy. In fact, if regulation is further increased, political activism and donations will likely be channeled into less accountable areas.

Union activity. A curious aspect of S. 1219 is that while it places substantial new limits on campaigns, political parties, corporations, individual donors and interest groups, it does nothing to limit the activities of the largest-spending and most vigorous category of political organizations, labor unions. Union political activity is far less regulated and reported than that of any other interest group. and to impose yet new limits on every other interest without addressing unions is fundamentally unfair. Worse, unions rely on government subsidies and involuntary dues payments to finance a large portion of their political activity. If there is one area of politics that needs more rather than fewer regulations, it is unions, and S. 1219 would make the situation even more unbalanced.

Why Campaign Finance Reform is Necessary

Although our system of government is based on the theory that voters may elect whomever they choose, in reality, incumbents have a huge home court advantage. What makes Democracy the preferred form of government is the ability of citizens to select their own leaders. This ability is threatened by incumbent advantages in fundraising and by virtue of holding office. Incumbents enjoy perks such as their office budgets, the ability to perform constituent services, free mail, ensured recognition in the media, and a great deal of free press.

Campaign finance legislation cannot make up for these incumbent advantages, but campaign reforms should avoid enhancing them, by, for instance, setting equal spending limits for challengers and incumbents, without accounting for incumbent advantages. Incumbents fundraising advantages derive largely from PAC's which are inevitably more willing to give money to a known name, rather than an unknown quantity. Thus, efforts to reduce the advantages PAC's currently enjoy should make elections more competitive.

In addition to incumbent advantages, many voters are concerned about special interest influence in elections, a problem which would also be addressed by reducing the role of PAC's in elections. Quite simply, equalizing PAC and individual contribution limits would reduce dramatically the perceived and actual role of special interests in elections. This should be done by raising individual limits, however, rather than by lower PAC ceilings.

While you can take steps to reduce incumbent advantages, and to limit the disproportionate interest of special interests, term limitation would best fulfill the campaign reform agenda. Special interest groups would be weakened and elections would be more open to challengers. With open seats every six to eight or even 12 years, elections would inevitably be more competitive. Special interests would have less to gain by lobbying and legislators would have less temptation to accept any offers.

Wamp Congress. One campaign proposal I would encourage you to look at with a positive view is that of Representative Zack Wamp. H.R. 2148 is the most widely-supported bill in the House, with 61 co-sponsors. His legislation would—

- lower the PAC contribution limit from \$5,000 to \$2,000 per election;
- raise individual contributor limit from \$1,000 to \$2,000 per election; and
- require 50 percent of individual campaign contributions to be from the candidates home state.

The Wamp reforms are productive and realistic, reducing special interest and incumbent advantages with a minimum of new regulation. The proposed increase in individual donation limits is less than the level required to offset inflation since 1974.

In conclusion, in view of the poor track record of government regulation of political activity, I would urge the committee to take the Hippocratic Oath on campaign finance reform: first do no harm. I fear that S. 1219, among other proposals, violates that principle.

The CHAIRMAN. Thank you very much. Welcome, Mr. Mason. I am very proud to say that Mr. Mason was affiliated with my office many years past and I am proud of that.

Mr. MASON. Thank you. I mentioned that in your absence.

The CHAIRMAN. I am proud of the career that you have put together.

Mr. MASON. Thank you, sir.

The CHAIRMAN. If I could interject, when the committee put together this panel, I personally called a number of potential witnesses and the Brookings Institution and the head of the Brookings indicated to me that they would participate in a subsequent hearing, as well as the head of the American Enterprise Institute. They likewise will participate. The committee will give a wide opportunity to those who labor in this greater metropolitan area for better government.

Ms. McBride?

TESTIMONY OF ANN McBRIDE, PRESIDENT, COMMON CAUSE, WASHINGTON, DC

Ms. McBRIDE. Thank you very much, Mr. Chairman. I really appreciate the opportunity to testify today.

Since I became President of Common Cause about a year ago, I have traveled extensively throughout this country and I have met with hundreds and hundreds, if not thousands, of Americans. I have to tell you that the American people, as I am sure you know from talking with your own constituents, are very deeply concerned.

They are deeply concerned about a lot of things, but one of the things they are most concerned about is the campaign finance system and the role of money in politics in Washington. The

American people have come to understand that the political system is rigged to benefit campaign contributors and incumbent office holders at the expense of citizens, and their anger has really reached the boiling point.

I was struck very much with a poll I read recently which said that 68 percent of the American people were deeply concerned about the role of money in Washington. Thirty-four percent of those people said it is one of the issues that worries them the most, and another 34 percent said it is one of the issues that worries them a lot. I think it is because they understand now that this issue of money and politics is not an abstract issue. It is an issue that directly affects their lives and their pocketbooks and their democratic form of government. They want change and they want it now.

But I come today, and I have testified for many years on this issue, but I come today at what I believe is a very exciting juncture in the issue of campaign finance reform. I believe that the message is not a message of gloom and doom, because with the introduction of S. 1219, this represents the first bipartisan bill in a decade and the first time ever that House and Senate members have come together around the same vehicle.

The CHAIRMAN. If I could interrupt you once again, thank you. A number of House members asked to testify today. We simply could not accommodate them, and therefore at a subsequent hearing we will do our very best. Thank you for raising that point.

Ms. MCBRIDE. With the courageous leadership of Senator McCain, Senator Feingold, Senator Thompson, and other cosponsors, we have a very real chance of passing and enacting reform this year. I think it is very interesting in a Congress that has been characterized by intense partisanship that these Democrats and Republicans have come together to work on legislation.

I have to tell you that we believe this bill is tough and it is fair and it is comprehensive and that these members have been willing to set aside partisan differences to come up with a bill that accomplishes a goal in a fair way. The American people owe these leaders a real debt of thanks.

Let me say, Mr. Chairman, that for many years, there have been a set of arguments raised about campaign finance reform. One of the problems that has been raised is that this is a partisan Democratic issue. Well, if you look at John McCain and Alan Simpson and Nancy Kassebaum, I think that that issue simply does not hold water. What you find is that Republicans, as well as Democrats, are talking about what is wrong with the system.

I know Senator McConnell faults Common Cause for using language about this issue that is far too strong, but if you look at what is happening now with this record number of departing members of the Senate, you find each of them, as they used to say on the sports programs, have looked at this system up close

and personal, and are talking about this issue in words that rival that of Common Cause or Public Citizen or others.

Let me just give you a quote from Alan Simpson, one of the most conservative Republicans in this Senate and one of the most respected members. Alan Simpson says the campaign system "is poisoning the system, prostituting ideals and ideas. It is demeaning democracy and debasing debate." This is strong language and it is language from a Senator who has been here for many years.

We have always believed that the campaign finance system has kept out quality challengers but what you find in this Congress is that there are many quality incumbents who are leaving this institution for many individual reasons, but virtually every one of them has cited the campaign finance issue as one of the reasons that they are leaving.

The second argument that has been raised that has divided this Congress has been public financing, and Senator McConnell has been an extreme and strong opponent of public financing. Common Cause supports public financing but we understand it is off the table. This bill now does not have public financing. I have seen that Senator McConnell is no longer calling it welfare for politicians, but now that this is somehow an entitlement bill. This is a bill that is fair and it gives free resources to candidates, reduced cost resources, and it provides it in a way, Senator, that we believe should meet your concern about public money.

We believe that this bill really meets the arguments that those have raised in the past, and I just want to say that few people realize that in the last three Congresses, campaign reform has passed the House and passed the Senate each of those Congresses. First, it died without a conference. Second, it died because it was sent to President Bush, who everyone knew would veto it. And thirdly, it died in a filibuster at the end of the last Congress.

We believe that campaign finance reform must be dealt with in the Senate and it must be dealt with soon, and we are calling on Majority Leader Bob Dole to publicly announce that he will first bring this bill immediately to the floor in March, that he will allow an up or down vote on it, and that he will not lead or participate in a filibuster. We think the American people want this issue dealt with and that it should be dealt with.

The CHAIRMAN. If I could interject at this point, of course, you are free to use this opportunity to express your views, and you have done it, I would suggest you might think a little bit about allowing this committee to do a fresh and thorough analysis for a period of time. We cannot, I assure you, complete that, in my judgment, given the number of persons and organizations petitioning to be heard, by a March time frame.

Now, I was not present but I understand Senator McCain threw down a challenge to this committee. Let us give this committee an opportunity to hear and listen to America and see

whether or not we as a committee, how we wish to treat this bill or other bills or perhaps originate something on our own.

So I would not quite put that gauntlet down to our distinguished leader at this point in time. That is just my view.

Ms. MCBRIDE. Senator, may I respond?

Senator MCCONNELL. Mr. Chairman, would you yield? Let me just make an additional comment. I think that is a point well made, particularly when the bill that Ms. McBride is suggesting is bipartisan is opposed by the Republican National Committee, the Republican Senatorial Committee, and then there are a number of outside groups who have not been publicly opposed in previous years who want to be heard before this committee, Right to Life, the National Rifle Association, the broadcasters who are being called upon to pay for these campaigns in this bill, the direct mail organization, which is also being called upon to pay for this bill. And, of course, we heard from the American Civil Liberties Union.

So your point, Mr. Chairman, is well made. There are a number of people who have decided this year that they are not going to sit on the sidelines and have nothing to say. I think since the Congress has changed, it is an opportunity to allow people who have been aggrieved by these proposals in the past, who have either not been called before the committee or who have been reluctant to testify, to at least have their say.

Ms. MCBRIDE. May I respond to that?

The CHAIRMAN. Yes, surely.

Ms. MCBRIDE. Thank you, Senator.

The CHAIRMAN. But thank you for opening the dialogue on that very important point.

Ms. MCBRIDE. I think the timing is an extremely important point because what we have found in past years is that once you get into an—we have been pressing and others have been urging, let us deal with this issue now. It is now February in the second year of a Congress, and I know this Congress has had a lot to deal with, but what we know is that as you get into an election year, it is less and less likely that this is dealt with.

We have had this bill considered and considered and we have had hearings on this campaign finance issue for many decades. It has passed the House and Senate each of the last three Congresses and we think it is time to act. We think that if this committee during this February time can have hearings and talk about the issue, that would be wonderful. But we know that if this goes on, if floor action is not dealt with until after the April recess, this issue is likely to die, and we have seen it.

I am not questioning your good intentions, Mr. Chairman, but the history of this issue is if you do not deal with it early, you do not deal with it, it is going to be killed, and I just think we simply cannot be at that situation where this Congress goes home with either having done nothing or having done something that does not represent real reform. This is just vital to the American

people and I think inclusion is valuable. Maybe you could ask people to submit written statements, but this, in our view, has got to be dealt with soon.

The CHAIRMAN. Take note that the chair decided that this subject merited such importance that it was the first hearing of this committee this year.

Ms. MCBRIDE. Yes, sir, and I realize that.

The CHAIRMAN. Give this committee an opportunity. When I solicited the views of my colleagues on both sides of the aisle here on this committee, I received strong support. Let us move ahead right away with this hearing, and that is why we are here today. But I thank you for raising that.

Ms. MCBRIDE. I will close, and I know that Joan Claybrook was going to discuss some of the specifics in the bill. We think the bill works well. We think it is a positive bill. We do not agree with those who say there is not enough money in politics today. We would also say that any legislation that does not end the soft money system is not reform. That has to be ended. It is basic. It is important and must be dealt with.

And I would say, Mr. Chairman, and I have pushed very hard that this bill be dealt with soon because I believe the American people desperately want a government they can feel proud of, that they can believe in, that they can look at and say that the voices of the American people are being heard, and they can look at and see that it is not being dominated by special interest pressures.

So we hope this issue will be brought to the floor, either through the committee or before the April recess so that there will be a chance for the entire legislative process to happen this year. We thank you very much for holding these hearings, for us having the opportunity to testify, and we look forward to working with you.

[The prepared statement of Ms. McBride follows:]

PREPARED STATEMENT OF ANN MCBRIDE, PRESIDENT, COMMON CAUSE,
WASHINGTON, DC

Mr. Chairman, members of the Committee:

I appreciate the opportunity to testify on behalf of Common Cause in support of S. 1219, the Senate Campaign Finance Reform Act of 1995, introduced by Senators John McCain (R-AZ), Russ Feingold (D-WI) and Fred Thompson (R-TN).

Common Cause applauds these Senators for their courageous leadership on this effort. Each has set aside partisan differences for the greater good of a meaningful campaign finance bill. This bill is the first bipartisan comprehensive campaign finance reform bill introduced in Congress in a decade, and the first ever bicameral bipartisan comprehensive campaign finance reform bill. I also want to note the steadfast support on the campaign finance issue provided by several Rules Committee members, including Senator Ford and Senator Byrd, and acknowledge their longstanding efforts on behalf of real campaign finance reform.

We are at a critical juncture in the fight for reform.

First, both Houses of Congress have passed strong gift bans and passed the first reform of the lobby disclosure law in 50 years. Both of these important victories were made possible by strong bipartisan support in both bodies.

Second, last year a bipartisan group of Senators joined together to successfully save the presidential campaign finance system—the most important government integrity reform of this century.

Third, last year, by a bipartisan vote of 57 to 41, the Senate went on record for consideration of campaign finance legislation before the end of the 104th Congress.

We challenge the leadership of this body to make good on the Senate's commitment to act in this Congress—and soon. Too often in the past, delay of consideration of campaign finance reform has meant that the legislation died in the final days of the Congress. We call on Majority Leader Robert Dole (R-KS) to schedule floor consideration of this bill in March to ensure enough time for the bill to make it through the legislative process before the 104th Congress adjourns.

THE PROBLEM

The new dynamic at work on this issue does not arise here in Washington, but swells out from the anger and outrage of Americans who are sick and tired of system that shuts them out and lets the rich and powerful in and who want leaders who are going to do something about it. The people want change in the campaign finance system, and they want it now.

Over the last year as the new President of Common Cause, I have traveled extensively and met with hundreds and hundreds of Americans across this nation. Our fellow citizens are deeply troubled by the cynicism and mistrust running rampant in our country. They are deeply disturbed by an unresponsive government and by a political process that has grown increasingly mean-spirited. They sense with alarm the growing divisions among us as a nation and the loud voices of negativism and hate. But perhaps most of all, they decry elected officials who listen more to big money and Washington lobbyists than to their own constituents.

The influence-money culture that pervades Washington, DC has become the symbol and the reality of what's wrong in our Nation's Capital and in our democracy. The American people have come to understand that our political system is rigged to benefit campaign contributors and incumbent officeholders at the great expense of citizens. And their anger has reached the boiling point.

This disgust with the current system is echoed by prominent national figures of all political stripes who have called for campaign finance reform. This past November, a diverse group of national figures sent a letter to the leaders of the House and Senate, criticizing the obscene spending in congressional campaigns and demanding immediate action on reform. They wrote:

It is our collective judgment that private interest money is having a corrosive effect on our representative democracy. Congressional campaigns are in too many cases spending obscene sums in the quest for victory. Special interests are all too happy to supply the funds via PAC contributions and so-called "soft money," increasing the access and influence of those who make them to the point that the Congress' agenda and actions no longer are determined solely on the basis of what is good for the majority. We all see the frightening erosion in the trust and confidence of the American people in their government.

Signers included Republican presidential candidate Pat Buchanan, Senators John Kerry (D-MA) and Alan Simpson (R-WY), a number of former Senators including Warren Rudman, David Boren and Paul Tsongas, and Ross Perot of United We Stand America.

And retired General Colin Powell said simply of the current campaign finance system, "Fix it."

In addition a group of 19 religious leaders representing Catholic, Protestant and Jewish faiths have proclaimed, "From churches and synagogues across the nation, we hear their sense that this is not an esoteric issue of technical election regulations, but one that goes to the essence of the ethical and moral life of our nation."

Here in Congress, retiring Senators and Representatives are adding their voices to chorus for change. While each of the record number of Senate retirees has individual reasons for leaving, a near-universal lament is their distress over a campaign finance system that dominates congressional elections and undermines congressional decision-making.

Senator Bill Bradley (D-NJ) called campaign finance reform the number one priority, "the most important issue out there. You can't change anything until you deal with the money in politics."

Senator Sam Nunn (D-GA) noted, "Too much of the time and efforts of Members of Congress are consumed by fundraising efforts. The ability to raise big money and buy saturation television ads have become the dominant theme of our political races."

Senator Alan Simpson (R-WY) said the current campaign financing system is "poisoning the system, it is prostituting ideas and ideals. It is demeaning democracy and debasing debate."

But the loudest voices demanding change are those of the American people. They have come to understand that campaign finance reform is not an abstract issue, but one that directly affects their lives, their pocketbooks and their democratic form of government.

A survey conducted jointly earlier this year by a Democratic and a Republican pollster found that in response to the statement, "Those who make large campaign contributions get special favors from politicians . . .", 68 percent of the people were deeply and seriously troubled; 34 percent said it was one of the things that worries them the most; and another 34 percent said it worries them a great deal.

The fact is Americans recognize exactly what is going on in Washington these days—large contributions buying access and influence in all aspects of legislative decision-making.

Just how this insidious system works can be seen by looking at what has happened to the House Republican freshmen who were elected to change the way business is done in Washington and who dubbed their class the "reform class." In fact, it hasn't taken many of these freshmen long to learn their way around the influence-money culture of Capitol Hill. During the first half of 1995—their first 6 months in Washington—these freshmen received \$5 million from special-interest PAC's. The average freshman raised 45 percent of his or her campaign money from PAC's in the first half of 1995. Compare that to their 1994 election campaigns when as open seat and challenger candidates PAC's provided just 22 percent of their funds.

Many of these freshman have become "instant insiders"—as dependent on PAC's as their well-seasoned colleagues. Business Week recently editorialized, "[T]he greediest gorgers on PAC money these days are the freshmen Republicans elected in 1994 on a platform of changing Washington. How sad it is to see them in Congress, shoulder-to-shoulder with lobbyists, thanking them for helping write legislation that will only benefit their clients."

Special-Interest Political Contributions

There is an inherent problem with a system in which individuals and groups with an interest in government decisions can give substantial sums of money to elected officials who have the power to make those decisions. In the current system, special-interest PAC contributions have become a dominant force in the financing of congressional campaigns. This dependence of Members of Congress, particularly in the House, on PAC contributions has seriously compromised the integrity and public credibility of the congressional decision-making process.

Contrary to myth, and contrary to the assertions of those who oppose campaign finance reform, PAC's did not spring from the reforms initiated by the 1974 amendments to the Federal Election Campaign Act. PAC's have existed since the 1950's, and were recognized as problematic in the early 1970's. Instead of solving this problem, however Congress bowed to business and labor pressure and, in 1974, —over the opposition of Common Cause—changed the law specifically to authorize for the first time the establishment and operations of PAC's by those with government contracts. This provision opened the door to tremendous

growth in the number of PAC's, since many businesses and labor unions had contracts with the government. In other words, there is nothing unintended about the resulting explosion in PAC's.

The explosion of PAC's has resulted in a growing dependence on PAC contributions. PAC's contributed a record \$189 million to federal candidates during the 1994 election cycle. In House races during the last election, winning candidates received 40 percent of their campaign money from PAC's.

The average successful Senate candidate took in slightly over \$1 million in PAC money in 1994. PAC money constituted nearly a quarter of the money raised by Senate candidates in 1994.

PAC money is special-interest money that is strongly linked to a special interest group's legislative agenda. It is often used as part of sophisticated lobbying campaigns by these special-interest groups to affect the public policy decisions made by Congress.

PAC's multiply their influence because of the cumulative effect of giving by all of the PAC's in a particular industry—such as banking, insurance, telecommunications or tobacco. And because PAC's give money year after year, they build up enormous aggregate contributions to Members of Congress over time—investments that they can then "cash in" when a critical piece of legislation of interest to that industry is under consideration.

And perhaps most troubling, PAC money goes overwhelmingly to incumbents. Used to buy access and influence to Members of Congress, PAC money helps to unbalance the political process because it makes it harder for challengers to mount credible campaigns. In 1994, challengers in House races on average received less than 15 percent of their campaign funds from PAC's. Senate challengers in 1994, on average, received less than 5 percent of their campaign funds from PAC's.

Washington Influence-Money Culture

To see the Washington influence-money culture at work, you only need to look at the insidious corporate welfare system that will cost American taxpayers \$265 billion over the next 5 years. Under this system, the beneficiaries are huge corporations and other wealthy special interests who use millions in political contributions to carve out lucrative government perks, massive tax breaks and other special benefits. While virtually all government programs are under intense scrutiny, these programs almost always stay off the table.

Let me cite one example. Archer-Daniels-Midland (ADM) and its chair, Dwayne Andreas, enjoy an enormous government tax subsidy that benefits producers of ethanol, an alcohol-based fuel. ADM has about 80 percent of the ethanol market. The ethanol subsidy costs taxpayers about \$3.6 billion over 5 years.

Since the Watergate era, when his contributions to the Nixon reelection campaign made headlines, Mr. Andreas has been a major player in the political money world, with contributions from the Andreas family and ADM totalling some \$4 million since the 1970's.

The impact of the influence-money culture is also evident in federal policy on tobacco. While the tobacco industry has been attempting to salvage its image with an enormous public relations campaign, tobacco giants are also carefully targeting millions of dollars in political contributions in their efforts to influence government decision-making. Since 1985, tobacco interests have contributed more than \$17 million in PAC and soft money to congressional candidates and the national parties. In the first 6 months of 1995, the tobacco industry poured more than \$1.5 million into the coffers of the national parties—a record for soft money giving during the period.

Special-interest money has also poured in from the health insurance industry and doctors who could potentially reap billions of dollars and favorable regulations as Medicare undergoes an overhaul. Since 1985, health insurance interests and doctors' associations have given nearly \$50 million to congressional campaigns and national party committees. Nine out of ten current Members of Congress have accepted contributions from both health insurance and doctors' PAC's during the past decade.

Similarly, the telecommunications industry gave almost \$31 million in PAC contributions in the last decade to aid their fight for less regulation and greater profits, a goal they have almost realized in new telecommunications legislation passed by both Houses last year. Other heavy political givers include the oil and gas industry, the gambling industry, and the alcohol industry.

A Spending Race Unfair to Challengers

But let's look at the problem from another side—from a candidate's perspective.

The present campaign finance system has played a central role in shaping an electoral landscape that is grossly unfair to challengers. Democracy depends on having real elections with real choices if people truly have the power to elect representatives who can be held accountable. Congressional incumbents now have such an extraordinary advantage over challengers that we are losing the ability to hold real elections for Congress.

Under the current system it is far easier for incumbents to raise money than challengers. In 1976, Senate winners spent an average of \$610,000; in 1986, the average Senate winner spent \$3 million. By 1994, that figure soared to \$4.5 million.

For the past decade, the general rule has been that, on average, Senate incumbents outspent challengers in the general election by at least a 2-to-1 margin. For example, in 1992, while the average Senate incumbent spent almost \$4.2 million for their campaign, the average challenger could only counter with less than \$1.8 million. In that election year, Senate incumbents outspent their general election challengers in 27 out of 28 races, and only four incumbents lost.

In 1994, in an exception to the general rule, two challengers—Michael Huffington and Oliver North—had huge war chests. However, when those two races are excluded, the spending of an average Senate incumbent is again twice that of the average challenger.

The picture in the House is bleaker. By 1994, winning a seat in the House of Representatives cost an average of \$450,000, and House incumbents outspent House challengers by a ratio of 2.6 to 1, or \$549,801 on average spent by incumbents to \$209,922 on average spent by challengers. In 1976, that ratio was 1.6 to 1.

PAC contributions point up the fundraising advantage incumbents enjoy: in 1994, labor PAC's gave 68 percent of their contributions to incumbents; business PAC's on average gave 77 percent to incumbents.

It is also, in large part, for this reason that, even in the "revolutionary" 1994 election, the incumbent reelection rate in the House was still over 90 percent. Incumbents generally are able to vastly outraise challengers and typically swamp their challengers by outspending them.

The need to raise this enormous amount of money makes elected officials dependent on those special-interest groups and wealthy individuals with money to contribute and which want to use those political contributions to buy access and influence.

Soft Money

The most destructive and dangerous money in the political system today is so-called "soft money." Soft money is a scandal. This loophole has given a rebirth to the kinds of huge contributions in the political process that have not been seen since Watergate.

Soft money is a loophole that has developed in recent years to provide candidates, contributors and political parties a means to evade federal contribution limits. Soft money is money that is *illegal* under federal law—it either violates federal source restrictions (such as money from corporations) or federal limits (such as large contributions from individuals in amounts often exceeding \$100,000).

Since 1907, federal law has prohibited corporations from contributing any money to federal campaigns. The prohibition on labor unions funds dates to the 1940's. Federal law also limits an individual to contributing no more than \$1,000 to a federal candidate per election, and no more than \$20,000 to a political party

per year. To evade these restrictions, soft money contributions are solicited by federal candidates and national party officials from individuals, corporations, unions or others and funneled through designated non-federal accounts of the national political parties. The national party committees then transfer the money from these accounts to the state parties. The state parties then spend the money on campaign activities that directly affect federal elections—activities such as generic advertising, voter registration drives or get-out-the-vote drives. Thus, the soft money contributions are laundered through the political parties in a way that allows federally illegal money to nonetheless be used to influence federal elections.

In the 1994 election cycle, Republicans raised more than \$45 million in soft money, while the Democrats raised \$40 million. During the first 6 months of 1995, the two parties raised a record \$30.6 million in the soft money slush fund. The Republican party raised a record \$20 million in soft money, of which \$7.8 million came in contributions of more than \$50,000. The Democrats raised \$10.5 million, of which \$5.3 million, more than half, came in contributions in excess of \$50,000. The largest single soft money contributor on record is a \$2.5-million donation from Amway to the Republican National Committee in October 1994.

Any campaign finance reform bill that does not end the soft money system is not reform. Instead, two systems will be created—one with limits and another one where money flows freely.

THE SOLUTION

While the amounts of influence money in Washington are enormous, the opportunity for reform has never been better. The bipartisan campaign finance reform legislation—S. 1219—presents a real opportunity to enact campaign finance reform this year.

S. 1219 is tough, fair and comprehensive, and should be passed by the Senate before the April recess.

- Voluntary Spending Limits

A poll taken this past summer found that 87 percent of Americans favor limiting the amount of money candidates can spend on a political campaign. Eighty-eight percent believe it will be effective to reduce the amount of money special-interest groups can contribute to a candidate.

A system of voluntary spending limits combined with clean campaign resources will control congressional campaign spending—spending which gives advantages to incumbents over challengers.

S. 1219 establishes voluntary spending limits for Senate candidates based on a state's voting-age population. The spending limits range from \$950,000 for candidates in smaller states like Wyoming to \$5.5 million in large states like California.

By putting a cap on spending, the bill will hold down the costs of a campaign, will give challengers a fairer chance, and will reduce the pressure on candidates to raise every increasing amounts of money.

As The Washington Post has noted, "At the moment, it is the *absence* of [spending] limits that hurts challengers. In 1994 incumbents outspent challengers in House races by better than 3 to 1. Properly set spending limits *help* challengers by preventing incumbents from burying them under money."

By inducing both incumbents and challengers to abide by a common spending cap, a spending limits system *with real benefits* will give challengers a real opportunity to compete with incumbents.

- Providing real benefits to participating candidates

Under S. 1219, Senate candidates who abide by the spending limits would be eligible to receive an aggregate of 30 minutes of free television time and would be able to purchase additional TV time at a 50-percent reduction of the lower-unit-rate cost. Qualified candidates would also be eligible to receive a reduced-rate mailing benefit for up to two mailings to all state voters. Candidates would be required to demonstrate a threshold level of support by raising 10 percent of the spending limit with 60 percent coming from individuals who reside in the candidate's home state. Candidates would also be required to limit the use of their personal wealth.

- Restrictions on Special-Interest PAC's

S. 1219 bans special-interest PAC's. However, if the PAC ban is ruled unconstitutional—as many believe it would be—the legislation provides a fallback provision that would limit PAC contributions to no more than 20 percent of the candidate's spending limit and would reduce the amount any one PAC can contribute to a candidate from \$5,000 to \$1,000 per election.

- Soft Money Ban

S. 1219 bans soft money. The bill requires that *any* money solicited or received by the national political parties must comply with federal law. So too, *any* money spent by the state parties on any activities which might influence federal elections—including voter registration and get-out-the-vote drives—must comply with federal law. And *any* money raised by a federal candidate or federal officeholder for federal elections must comply with federal law. These three provisions, taken together, will close the corrupting soft money loophole.

S. 1219 also closes other loopholes in the current system including banning bundling which allows PAC's, registered lobbyists, agents of corporations or labor unions to evade federal contribution limits, banning the use of the frank for mass mailings in election years, banning the use of campaign funds for personal uses, banning members' PAC's and strengthening enforcement.

S. 1219 contains some provisions dealing with independent expenditures, particularly tightening the definition of independent expenditures to ensure that there is no coordination or consultation between the supposedly independent spender and the campaign of the candidate who benefits from the spending. While the Supreme Court has ruled that spending in support of or in opposition to a candidate that is not coordinated with any candidate cannot be limited. In addition we believe there are ways the bill could be strengthened to deal with independent expenditures. For example, if independent expenditures over a threshold amount are made against a complying candidate, or in favor of the opponent of a complying candidate, the complying candidate should be provided with free response time adjacent to the independent spenders' broadcast advertisement.

BIPARTISAN BREAKTHROUGH ON REAL BENEFITS: BROADCAST TIME

Under S. 1219, candidates who agree to spending limits are provided free and reduced-cost television time. Free television time is a concept which has been supported by Majority Leader Dole, Senator Mitch McConnell (R-KY) and others.

Broadcast advertising is not only one of the most successful ways a congressional candidate can reach voters, it is also one of the most expensive. For many challengers, TV ads are often prohibitively expensive. In 1992, broadcast advertising was the single largest expense for Senate candidates—accounting for more than 40 percent of their expenditures, according to Congressional Quarterly's Handbook of Campaign Spending.

Asking broadcasters to provide time to qualified candidates is in keeping with the broadcasters' responsibility to their viewers. The airwaves are owned by the public. The broadcasters receive a license to use and profit from the public's airwaves. Congress has the power to condition that license on the broadcaster's agreement to provide a reasonable amount of air time at free or reduced rates for the sake of improving the political process.

Broadcasters have a responsibility to the public in return for the broadcasting licenses they receive. That public responsibility should include providing TV time to candidates who agree to spending limits.

In a recent speech, Reed Hundt, chairman of the Federal Communications Commission, stated that his support for requiring broadcasters to provide air time to candidates, and laid out why such proposals are constitutional. Hundt noted that the average Senate candidate in a contested election in 1992 spent \$2.4 million on media expenses; in California, the two candidates spent over \$50 million. In the aggregate, in 1994, candidates spent \$355 million on media advertising. In 1996, this figure is expected to be over \$500 million.

Hundt noted that these media costs, in themselves, place a huge burden on candidates, "The cost of TV time-buys makes fundraising an enormous entry barrier for candidates for public office, an oppressive burden for incumbents who

seek reelection, a continuous threat to the integrity of our political institutions, and a principal cause of the erosion of public respect for public service." He debunked the notion that free or reduced-rate broadcast time provided to candidates would amount to an unconstitutional "taking." He said, "Everyone acknowledges, broadcasters are granted commercial use of the public's airwaves as long as they serve the 'public interest.' Since the beginning of modern broadcasting after World War II, the FCC has regarded that 'public interest' as including the use of TV to develop 'an informed public opinion through the dissemination of news and ideas concerning the vital public issues of the day.'"

Instead, as Hundt noted, "numerous commentators have concluded that TV has enslaved politicians and degraded the electoral process." The obligation to serve the "public interest" provides the basis for requiring broadcasters to provide free or reduced-rate broadcast time. Further, Hundt rejects the notion that such a requirement will unconstitutionally take the property of broadcasters. "Under the Communications Act of 1934, broadcast licensees have no property claim to the airwaves or to a particular frequency."

OPPONENTS OF REFORM

Mr. Chairman, I'd like to take a few moments to respond to some arguments made by opponents of this important reform.

Speaker Gingrich has publicly opposed the companion bipartisan bill in the House. He also recently testified that there is too little money spent on political campaigns.

He argued that the total amount spent on House and Senate races in 1994, a record \$724 million, was only twice as much as the advertising budgets for the three leading antacid manufacturers, and that this shows the money currently spent in politics is not excessive.

This view—not enough money is spent on politics—badly misses the point and is seriously wrong. The problem is not simply how much money is *spent*, but how much money must be *raised* and what candidates must *do* to raise it. The fundraising, the reliance on PAC's and wealthy individuals, and the advantage of incumbents with access to money distort the political process.

For example, the pressure to raise the \$4.5 million Senate average means that Senate candidates have to spend much of their time fundraising. Fundraising becomes an enormous distraction that interferes with Members doing the job they were elected to do. The \$4.5 million the average Senate candidate must raise means a Senator must raise approximately \$15,000 a week, every week for 6 years, starting the moment he or she is sworn into office.

As Senator Paul Simon noted, "A great many people visit the United States Senate, and they will see two or three of us on the floor debating some issue, and they get discouraged . . . But they would be even more discouraged if they knew the reality. Probably at that point, there are more Senators on telephones trying to raise money, than there are on the floor of the United States Senate."

The need to raise this enormous amount of money makes elected officials dependent on those special-interest groups and wealthy individuals which have money to contribute—and who want to use those political contributions to buy access and influence.

Recent press reports indicate that part of Speaker Gingrich's proposed solution is to increase the influence of wealthy individuals by increasing the individual contribution limits five-fold. This increase would mean that one couple could give \$20,000 to a congressional candidate—close to the average annual pay of working Americans.

There is not too little money in politics today, but too much—too much fundraising, too much spending, too much special-interest money.

And Mr. Gingrich's solution—raising the individual contribution limit five-fold—would only increase the influence of the wealthiest Americans at the expense of the average taxpayer.

To say that the current individual contribution limit is \$1,000 actually understates the reality. The *cycle* limit on what an individual can contribute to a candidate is \$2,000—\$1,000 each for the primary and general election. And when, as is often the case, both spouses make the maximum contribution, a married

couple thereby contributes \$4,000 per candidate per election cycle. Thus, the existing contribution limit gives the very wealthy the ability to contribute a sum of money that is well beyond the capacity of average Americans. To increase the contribution limit—to \$20,000 for a couple during an election cycle—is a change that would work to the benefit only of the very wealthy, and would further increase the disparity between the wealthy and average citizens in the relative ability to influence campaigns.

Speaker Gingrich also recently said that the number one problem in political campaigns is the wealthy candidate who spends his or her own money in a campaign.

There is now doubt that, under the existing campaign finance system, a wealthy candidate who is willing to spend an unlimited amount of his or her own personal fortune on a political campaign has an advantage today. It is difficult under existing rules for an opponent to raise the money necessary to compete with a wealthy candidate because spending by a wealthy candidate cannot be directly restricted due to constitutional limitations.

Certainly this is an issue of concern but it is also an issue which can and should be addressed within the confines of the Supreme Court decision. S. 1219 provides valuable alternative resources to complying candidates that can be used to compete effectively with a wealthy opponent who chooses not to comply with the spending limits.

The broadcast provisions in S. 1219 give complying candidates running against wealthy candidates several advantages in response. Complying candidates are eligible to receive the free or reduced-rate broadcast time, and the wealthy candidate is not. The 50-percent discount on television means that \$1 million of campaign funds spent on television is actually worth \$2 million. Thus, complying candidates are able to buy an unlimited amount of broadcast time at half of the cost to the wealthy candidate purchasing the same amount of time. This is a significant advantage to complying candidate.

Under S. 1219, wealthy candidate may continue to have an advantage, but opponents of wealthy candidates will be provided real resources with which to counter that wealth.

In truth, wealthy candidates who have spent their own money on their campaigns have not gotten much bang for their buck. While 14 Senate candidates each used \$1 million or more of their own money in 1994 Senate races, only four of them were successful. Three of the four were incumbents—a group with a 90 percent reelection rate in any case. Overall, personal wealth accounted for only eight percent of 1994 Senate winners' campaign funds, while 20 percent of their funds came from PAC's, according to the Congressional Research Service. In 1994 House races, 16 candidates each used \$400,000 or more of their own personal wealth for their campaigns. Only two of the 16 won a seat in Congress. Overall, winners in 1994 House races relied on personal wealth for only one percent of their campaign funds, while raising 38 percent of their funds from their PAC's.

And in the one federal system with limits that does exist—the presidential system—only two of the major party candidates have elected not to participate in the spending limits system, and only one—current candidate Steve Forbes—has chosen to use his own money.

Another approach of opponents is to say that you do not need contribution limits but only disclosure. Of course, you could say the same thing about a bribe—don't make bribery a crime, just disclose it and let the voters decide. The fact is, however, that Americans want a political process that is based on standards of integrity and fairness, a process where big money cannot dominate.

Disclosure is a critically important part of campaign finance regulation, but in itself will not make the campaign finance system fair, open and accountable. We have disclosure now, and that has not stopped wealthy individuals and special-interest groups from using campaign contributions to buy access and influence with elected officials. To remove contribution limits would say the sky is the limit. Mere disclosure of such corruption would not control it, but explode it. Disclosure of rampant corruption would serve only to increase public cynicism about politics and further the alienation of average voters from their government.

PRESERVING AND PROTECTING THE PRESIDENTIAL CAMPAIGN FINANCE SYSTEM

In the midst of the growing call for reform of congressional campaign finance, the most important political reform of the past 90 years—the presidential campaign financing system—is under attack. On May 24 of last year, the Senate rejected an effort to gut the presidential system.

The presidential campaign finance system—enacted in the wake of the Watergate scandals—initially met its goal of dramatically improving the way the President is elected. The system provides optional public matching funds during the primary election, and full public funding for the major party candidates in the general elections. Candidates who choose to accept the public funds also agree to adhere to spending limits in both the primary and general elections.

All but two of the 66 major party candidates since 1976 have opted into this system. For the first decade of its existence, the presidential system reduced the role of special-interest influence money in presidential campaigns and made presidential elections more competitive by equalizing spending between candidates. It also has successfully restrained spending—in 1972, the Nixon campaign spent \$60 million, the equivalent of over \$200 million in inflation-adjusted dollars. By contrast, spending by each of the candidates in 1992 was about \$90 million, well below the rate of spending prior to the reform.

Further, a challenger has defeated an incumbent in three of the four campaigns conducted under the system (excluding the 1988 race, which had no incumbent), a competitiveness that contrasts sharply with congressional campaigns where incumbent reelection rates always exceed 90 percent.

In addition, far more citizens give to political campaigns through the voluntary checkoff system than through direct contributions. While approximately one in seven Americans now contribute to presidential campaigns through the checkoff, only one in 22 Americans contributed to political campaigns in 1994, according to a University of Michigan study. With that support, the presidential system has been able to fund elections since its inception in 1976.

Former Senator Paul Laxalt (R-NV), who chaired numerous campaigns for President Reagan, has said that the presidential campaign system “worked, and it was like a breath of fresh air.” A bipartisan study commission headed by Republican Melvin Laird and Democrat Robert Strauss concluded in 1985 that the system “has clearly proven its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in presidential election finance.”

Since the mid-1980's, however, the emergence of the soft money loophole has greatly undermined the integrity of the presidential system by reintroducing Watergate-style contributions in presidential campaigns. Again we see huge corporate donations and \$100,000 (or more) individual contributions being raised by national political leaders and by the political parties. This is a pernicious loophole that can and must be closed and would be closed by S. 1219.

While ending the soft money system is absolutely critical to ensuring the continued success of the presidential campaign finance system, there are several other reforms Common Cause believes would significantly improve the system:

- End State-by-State Limits

Common Cause supports eliminating the state-by-state limits for publicly financed Presidential primary candidates.

There has been a general consensus among both candidates and observers of the system that the state limits do not reflect the realities of the primaries—in which a only few states, especially those with the earliest primary dates, are the targets of substantial spending by candidates. The Federal Election Commission reported that “the limitations have had little impact on campaign spending in a given state, with the exception of Iowa and New Hampshire. In most other states, campaigns have been unable or have not wished to expend an amount equal to the limitation.”

Although several other states are holding early primaries in 1996, the overall spending limit for the primary season will continue to act as a necessary constraint on spending by candidates. While candidates will have to exercise care in

allocating their spending, elimination of the limits will give them greater discretion in the running of their campaigns.

- Free and reduced-cost television time

Common Cause supports extending the concept of free and reduced-cost television time to presidential candidates in both the primary and general elections.

Television is especially important to presidential candidates. Although the early primaries in Iowa and New Hampshire focus on face-to-face campaigning, television remains an important element in those states. In the larger states which now have earlier primaries—New York, California, Texas—television is the key element in the campaigns and it is where most campaign funds are spent.

We strongly believe that providing the resource of free or reduced-cost television time is critical for congressional candidates and is equally so for presidential candidates. Providing candidates with this additional resource would offer additional clean resources for candidates who agree to spending limits and would help blunt the impact of wealthy candidates' spending their own money.

- Fix the Underfunding of the Presidential Election Campaign Fund

As you know, 1996 presidential primary candidates did not receive the full allotment of matching funds to which they are entitled on January 2. While the shortfall was partially due to the large amounts of funds raised by candidates in 1995 and the fact that the \$3 checkoff amount has only been in effect for two years, another factor is Treasury Department regulations which do not allow anticipation of funds which taxpayers will check off in early 1996 and which will be available to the fund later in the primary season. We believe the Federal Election Campaign Act should be amended to explicitly allow a reasonable estimation of anticipated revenue to make it possible for primary candidates to be fully funded.

In the long term, we believe it will be necessary for Congress to index the \$3 checkoff amount to inflation, in order to bring the revenue to the fund in line with the already indexed payments to candidates.

- Provide Candidates With Matching Funds at an Earlier Date

Common Cause believes the committee should consider moving the current date for providing the first payment of matching funds to presidential primary candidates from the beginning of the election year to an earlier time in order to accommodate the now "front-loaded" primary season. Public funding of primary candidates is intended to provide candidates with a source of funding free of special-interest influence and to free the candidates themselves from the burden of spending most of their time raising money rather than meeting with voters. Allowing the use of matching funds at an earlier date would recognize the reality that primary campaigns do not begin on January 1 of the election year.

CONCLUSION

Mr. Chairman, campaign finance reform is a test of the willingness of politicians to support truly revolutionary change in our government. If the Senators and Representatives who have spent much of the last year talking about changing business as usual in Washington are sincere, they will join as a sponsor of S. 1219. The alternative—one the American people will no longer tolerate—is to continue to support the current campaign finance system that is fundamentally corrupt.

We urge support for S. 1219 and will support only strengthening amendments that do not undermine the bipartisan support for the bill.

Thank you.

The CHAIRMAN. And I thank you, Ms. McBride, very much.

Ms. Claybrook, you are no stranger to the halls of Congress.

TESTIMONY OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, WASHINGTON, DC

Ms. CLAYBROOK. Thank you, Mr. Chairman. I really appreciate the opportunity to come and talk with you.

The CHAIRMAN. We are glad to have you.

Ms. CLAYBROOK. We do support the bipartisan piece of legislation and I would like to comment on it because we do think that the committee could add some insight and improvements to it and we certainly hope that you will do that.

I would like to reiterate that I know the speed with which you work. I have seen you do this in the past, also Senator McConnell. You have a great capacity to do that, and I do think that the balance that needs to be struck here is for you to have a chance to study and understand this and to give everyone a voice, but to do it quickly. We certainly hope that you will be able to meet that other side of the goal.

The CHAIRMAN. I think the testimony you are providing, Ms. McBride, the other two panelists, and those that preceded you are going to trigger some interest across the nation, and I anticipate we will have many requests here very shortly for future hearings.

Ms. CLAYBROOK. Good. I hope so, and I hope they will be done quickly.

I would like to say that as we talk about this issue, that it is very clear that the current system of campaigns does fuel distrust and frustration among the American public. If we look at how many people vote, we see that it is small. The public opinion polls, the focus groups show that many citizens believe that members of Congress respond to their contributors and that voters are left out of the system. So there are really two players in the political process. One are the people who give money and really call the shots and the other are the average citizens who, even when they vote, they think often it does not make much difference.

I would also like to quote some of your colleagues and former colleagues that signed a letter to the Majority Leader and to the Speaker on November 7, 1995. This was signed by Senator Bradley, former Senator Boren, Pat Buchanan, Senator John Kerry, Senator Sam Nunn, Ross Perot, and former Senators Rudman and Tsongas, as well as Senators Paul Simon and Alan Simpson.

Their first two sentences say, "It is our collective judgment that private interest money is having a corrosive effect on our representative democracy. Congressional campaigns are in too many cases spending obscene sums in the quest for victory. Special interests are all too happy to supply the funds via PAC contributions and so-called soft money, increasing the access and influence of those who make them to the point that Congress's agenda and actions are no longer determined solely on the basis of what is good for the majority."

I do agree that this issue has other elements to it and one of them is the First Amendment, but I think that the testimony we have had today did not give sufficient credence to what the Supreme Court has said, which is that there can be limits on contributions and what they looked at was the corrupting

influence of too much money. That is the balancing factor that the Supreme Court has used.

I would like permission, Mr. Chairman, to submit to you some material from our organization that deals with that issue, because it is the other side of the equation and it is, as in most legislation, a balancing act between the First Amendment and the right to speak on the one hand and the corrupting influence of money on the other hand.

The CHAIRMAN. Without objection. We will be happy from time to time with you and other witnesses to consider including in the record of these proceedings material, but bear in mind, given the cost of preparing these records, we have to exercise some discretion as to the volume of some submissions.

Ms. CLAYBROOK. We are a frugal organization and we will be frugal with our words.

The CHAIRMAN. Thank you.

[The material submitted by Ms. Claybrook is included in Materials Submitted for the Record.]

Ms. CLAYBROOK. The current system does allow special interests to control the legislative process in many ways, through campaign contributions, through forging public policy decisions that do not respond to citizens' concerns, in our view.

Senator McConnell asked for a definition of special interests and I thought I might just throw mine on the record. It is an investor in the political process, Senator. A special interest is an investor and they expect—

Senator MCCONNELL. So there has to be money attached to it? If you are just pursuing a good cause, you are not a special interest?

Ms. CLAYBROOK. Right. They are an investor and they seek a return on their money, and they—

The CHAIRMAN. What was that last word? They what?

Ms. CLAYBROOK. They seek a return on their investment, on their money that they invest.

The CHAIRMAN. What about the churches and schools that frequently—

Ms. CLAYBROOK. I do not think that they are special interests. I am defining special interest as I—

Senator MCCONNELL. What do you think about the home mortgage interest deduction?

Ms. CLAYBROOK. What do I think about it?

Senator MCCONNELL. Yes. What about that?

Ms. CLAYBROOK. I think that it is very advantageous to people who own homes.

Senator MCCONNELL. So if the Realtors, for example—I am sure you would define the Realtors as a special interest, right?

Ms. CLAYBROOK. Absolutely.

Senator MCCONNELL. So you think the home mortgage deduction—

Ms. CLAYBROOK. If they give campaign contributions, which they do.

Senator MCCONNELL. So you think the home mortgage interest deduction is a result of the pernicious influence of the Realtors?

Ms. CLAYBROOK. I think that it is a payback for what they invest, that is right. It is an investment.

Moving right ahead, I do want to compliment you also, Senator, for having these hearings, and I hope that the hard work that the sponsors of this bipartisan legislation have put into their bill will be given consideration. The sponsors, none of them, would have written the bill the way it is written. They attempted to balance the interests of both sides of the aisle in putting together a bipartisan bill, and it is the first bipartisan bill and bicameral bill that has ever been before the Congress on campaign reform.

We support this legislation, not because it is perfect but because it accomplishes the goals of campaign reform, and we believe that it does have a chance to become law because of that. We hope that as the committee does its work, it will continue to work in a bipartisan way and with those sponsors of this legislation.

We do not want to score political or rhetorical points. We really want to pass legislation. We think that this is the time to do that.

It does not have public funding, which I support, as I think you know, and it does not reduce individual contribution limits, which I support, but it does attempt to remedy the imbalances between incumbents and challengers. That is a major issue. I think that the record should reflect, in contrast to the prior witnesses, that the challengers who run today and in the recent past have never reached, on the average, the limit on expenditures that is in this legislation, with the exception, I would say, of the last election because of several extraordinarily wealthy candidates.

But by and large, challengers are not limited by this bill. The big problem for challengers is they do not have enough money and the balance struck here is that you put a limit on expenditures and then if the incumbent complies with that and the challenger complies with that, then you have a fair campaign.

Now, the Supreme Court has said you cannot mandate a limit on expenditures, and so this is a voluntary limit on expenditures in this legislation. It encourages, by supplying the free TV and the low-cost TV and the mailings, it encourages candidates to come under this system and take the risk of trying to reduce the money in politics, even though there is a possibility that they are going to have an opponent who will not take that risk, who will operate outside the system.

So the framework of this bill is an attempt to encourage people to come into it and to limit their expenditures. I do

believe that one of the areas of the bill that is least well conceived is in the area where you have a very wealthy candidate who opts out, who runs against you and, in the same way that Steve Forbes is doing in the Presidential campaign, has endless amounts of money to spend. I think some improvements could be made in that particular section of the bill and I hope that you will permit us to submit some suggestions to you for improvements in the legislation.

We believe that in addition to improvements concerning the very wealthy candidate, that there does need to be some improvement in the area of independent expenditures. I think there was a misinterpretation by one of the prior witnesses about what this bill does. It does not limit independent expenditures. It bans PAC's, but it does not place a limit on independent expenditures, and I do not believe under *Buckley v. Valeo* you could do that, but it does ban PAC's. We also do not think that that would be constitutional. This bill recognizes that potential and has a backup provision which then puts an aggregate limit on PAC contributions.

On independent expenditures, though, there is a real problem, as you have both said, that if you have limits on soft money, then you might have many more independent expenditures and we think this bill should take that into account by giving a public benefit such as free TV to match in some way, maybe not fully, the independent expenditures that both happen today and might well happen more under this legislation.

The bill does not ban leadership PAC's. We believe that it should. These are really just slush funds, political slush funds, and we think that each member or candidate should only have one campaign committee.

In addition, we believe that there should be some aggregate limit on the amount of large donor funds that you can receive to balance the legislation.

So those are our major views on the bill. We do think it is an essential piece of legislation. We urge you to move quickly on it and we trust that you will.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN,
WASHINGTON, DC

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify today. My name is Joan Claybrook, and I am the President of Public Citizen.¹ Public Citizen is a national consumer advocacy group, founded by Ralph Nader in 1971, with approximately 100,000 members across the country.

Public Citizen has for many years sought to increase government's accountability to citizens through a number of legislative initiatives, including campaign finance reform. We focus on this issue because it is our firm belief that the current system of financing congressional elections is in large part responsible for the

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I would like to thank Robert F. Schiff, the staff attorney at Public Citizen's Congress Watch who works on campaign finance reform and other government accountability issues, for his assistance in preparing this testimony.

distrust and disaffection that many citizens feel for Congress and government in general. By huge majorities Americans believe that government cannot be trusted to do the right thing most of the time. Similarly large margins believe that lobbyists and special interests control the legislative process through their campaign contributions, leaving the Congress unresponsive to the concerns of average citizens. We applaud this Committee for recognizing the need to take these concerns seriously by scheduling these hearings, and we urge you to move expeditiously to report a campaign finance measure for consideration by the full Senate.

Our testimony today focuses on S. 1219, the bipartisan bill introduced by Senators McCain, Feingold, and Thompson, which now has a total of 15 cosponsors. We believe this bill should form the basis of this Committee's work on campaign finance reform legislation and we hope that the Committee can follow the lead of the bill's cosponsors to work cooperatively and in a bipartisan manner.

Public Citizen has worked for a quarter century on this issue, and we have seen many opportunities for reform founder on the shoals of partisan conflict. At this juncture, our desire, and that of our members, is not to score political or rhetorical points, but to pass legislation. That is why we have endorsed S. 1219, even though it is clearly not the bill we would write if the Senate asked us to design a reformed campaign finance system. For example, it does not provide for partial public financing of Senate elections, which we continue to believe is the best way to achieve the two primary goals of reform—encouraging competitive elections by leveling the playing field between incumbents and challengers and decreasing the importance of special interest money to campaigns and therefore the influence of special interest money over the legislative process.

Nonetheless, we support S. 1219 because it advances those goals in concrete and significant ways, it addresses the most significant abuses under current law, and it deals constructively and straightforwardly with important constitutional issues. Perhaps most important, it has a chance of becoming law this year. Each of the cosponsors and the groups supporting the bill has compromised in order to come up with a package that can gain bipartisan support in both the House and the Senate and presidential approval.

I. S. 1219 Will Reduce the Cost of Senate Elections and Advantages Held By Incumbents

There has been a steady increase in campaign spending in Senate races over the past few decades. The average Senate candidate spent \$3.9 million in the last election, and the average incumbent running for reelection spent \$4.9 million. The average winning Senate candidate spent \$1.2 million in 1980, \$3.3 million in 1990, and \$4.6 million in 1994. Running for the Senate is increasingly becoming a game that only the rich can play. Indeed, nearly 30 percent of the Senate are millionaires, according to the Capitol Hill newspaper Roll Call. Those who are not rich must spend inordinate amounts of time raising money. To raise the average war chest of \$3.9 million, a candidate would have to raise an average of \$12,500 per week for 6 years. A challenger who starts raising money in the last 2 years would have to average \$37,500 per week to raise that much.

Notwithstanding these startling figures, some argue that there is not enough money in politics. The public, however, strongly disagrees. A 1994 Bannon Research poll found 78 percent support for mandatory limits on campaign spending. Mandatory limits, of course, are unconstitutional under the Supreme Court's 1976 decision in *Buckley v. Valeo*. That is why Public Citizen has long supported the alternative of voluntary spending limits, which the *Buckley* Court upheld. S. 1219 sets these voluntary limits at a reasonable level, varying according to the population of a state. For the general election, the limits range from \$950,000 in states with small populations like Wyoming, New Hampshire, and Delaware to \$5.5 million for California, the largest state. Primary spending is limited to two-thirds of the general election limit.

Just as important as spending limits are the benefits offered to candidates who comply with them. Complying candidates receive 30 minutes of free prime time television advertising during the general election and half price television advertising during both the primary and general elections. They also are permitted to

make two reduced rate mailings to all voters in the state. These benefits will allow underfunded candidates, particularly challengers, to compete on a more equal basis with their opponents, even if their opponents decide not to participate in the spending limit system. Particularly since television advertising has become such an important part of Senate campaigns, these are significant benefits for candidates.

The payoff from a system of voluntary spending limits will be fairer, less expensive, more competitive elections, more time for Senators and candidates to spend with their constituents and working on policy rather than fundraising, and a reduced demand for special interest money. We think the political process will greatly benefit from these changes.

Another important reform to level the playing field between incumbents and challengers are the provisions in S. 1219 relating to use of the congressional frank. By prohibiting the use of the frank for mass mailings during an election year, S. 1219 eliminates an advantage held by incumbents that can be worth millions of dollars. There is simply no justification for permitting officeholders such an advantage in communicating with potential voters.

II. S. 1219 Will Limit the Influence of Interested Money on the Political and Legislative Process

Interested money has corrupted our legislative process and severely undermined the public's confidence in it. A September 1995 poll by the Mellman Group found that 49 percent of the public believes that special interests control the federal government in Washington. And 92 percent believe that campaign contributions affect congressional votes at least somewhat. (Nearly 70 percent believe that contributions affect voting decisions "a lot.") With the shift of political control in this Congress, we have seen an extraordinary shift of political giving to the party in power and numerous examples of industries making campaign contributions an integral part of their lobbying efforts.

For example, the national health reform effort in the 103rd Congress touched off a deluge of contributions from health care interests. According to an analysis of FEC data by the Center for Responsive Politics, PAC's associated with the health care industry contributed \$16.8 million dollars to federal candidates in 1993-94. The collapse of legislative efforts to reform the system didn't slow the rate of contributions from the health care industry. Indeed, efforts to change the Medicare and Medicaid programs prompted an even greater flow of contributions. Public Citizen studied contributions by PAC's for 12 of the 20 largest managed care companies and their trade association—the industry most likely to benefit from the proposed changes—and found that they had increased their rate of contributions over the 1994 cycle and dramatically shifted the focus of their contributions. In 1993-94, the PAC's studied gave 56 percent of their contributions to Democrats, but in the first 6 months of 1995, they gave 75 percent of their contributions to Republicans. This sort of cynical pursuit of influence with those in power is precisely the sort of behavior that fuels public disgust with the current system.

S. 1219 addresses special interest money in a number of ways. First, it bans contributions by PAC's, which are the most visible source of this money and the most obvious tool of special interest lobbying. If that ban is held unconstitutional, there is a backup provision that reduces the amount that PAC's can give from \$5,000 per election to \$1,000 and puts a cap on the total amount that a candidate can accept from all PAC's of 20 percent of the applicable spending limit.

Just as important, S. 1219 ends the disgraceful soft money system through which corporations, labor unions, and wealthy individuals launder literally millions of dollars through the political parties. These contributions, more than anything else, have created the impression that our elected leaders are for sale. When Philip Morris and other tobacco interests give \$1.5 million to the Republican party in the first half of 1995, 18 months before the next election, the public has every reason to be cynical about the motives behind those donations.

The soft money problem is not limited to a single political party. Both parties have engaged in the truly reprehensible practice of openly selling access to their leaders. Although many public officials scoff at the notion that their decisions are

influenced by campaign contributions, those wealthy donors who are willing to pay a quarter of a million dollars to have a private lunch with Speaker Gingrich or Senator Dole, or \$100,000 for a private meeting with a Clinton Administration Cabinet Secretary obviously believe that these audiences have significant value.

Not surprisingly, both parties resist banning soft money. But no reform legislation is worthy of that title unless it does something about this most egregious evasion of the contribution limits that otherwise apply to federal elections.

We should be clear that our opposition to soft money should not be interpreted as opposition to the valuable role that political parties play in our democracy. We simply believe that the parties' activities should be funded with money that is subject to contribution limits like any other campaign donation. Ending the soft money system will not kill the political parties, it will simply force them to play by the rules that Congress has imposed on federal candidates.

III. S. 1219 Closes Some of The Most Egregious Loopholes and Abuses Under the Current System

Soft money is by far the worst loophole in the current system, but it is not the only one. S. 1219 also attempts to deal with a practice known as "bundling," whereby PAC's and lobbyists collect checks for delivery to a candidate. This practice allows these interested parties to magnify their influence beyond that which they gain with a single PAC or individual contribution. A lobbyist who can organize \$50,000 in individual donations his or her company's executives is surely welcome in any Senator's office. We believe that certain aspects of the bundling provision can be improved, but we support the overall approach of the bill, including applying the provision to ideologically motivated groups that currently bundle mainly small contributions.

IV. S. 1219 Offers Protections Against Wealthy Candidates

Under the *Buckley* decision, Congress cannot limit the amount that an individual spends on his or her own campaign for the Senate. As a condition of participation in the voluntary spending limits system, S. 1219 requires candidates to limit their personal spending to 10 percent of the spending limit or \$250,000, whichever is less. When a participating candidate's opponent does not agree to the limit and spends more than 10 percent of the limit in personal funds, S. 1219 calls for a 20 percent increase in the participating candidate's spending limit and allows the participating candidate to accept contributions of up to \$2,000 per election.

These provisions are not punitive in the sense that they would force a candidate to accept the spending limits rather than self-finance a campaign, but they do offer some protection to candidates faced with a wealthy opponent unwilling to abide by the spending limits. The benefits provided by S. 1219 to candidates who agree to limit their spending also will make it easier to compete with a self-financed candidate. We hope, of course, that the number of candidates intent on outspending their opponents with money out of their own pockets will decrease as it becomes clear that the public wants all candidates to live under the same rules and limit their spending.

V. S. 1219 Is Constitutional

There is no question that first amendment concerns are implicated by campaign finance legislation. And there can be no certainty about exactly how the Supreme Court will address those concerns when faced with the inevitable challenge to any law that Congress may pass in this area. Twenty years after the *Buckley* decision, however, there is little sign that the Court is inclined to revisit the basic underpinnings of that decision. S. 1219, therefore, has been carefully drafted to protect the rights of free speech and political association as defined by the Court.

The voluntary spending limits system, for example, is truly voluntary. The bill does not contain punitive measures to coerce compliance with the limits. The fact that a complete ban on PAC's may well be unconstitutional is recognized by providing an explicit fallback provision. And a potential constitutional challenge to a limit on out of state contributions is avoided by making that limit a condition of receiving the media benefits, rather than a generally applicable provision.

We strongly believe that the media benefits provided in the bill to candidates participating in the spending limits system will withstand constitutional scrutiny as well. The public owns the airwaves and has the right to set conditions for their use for private profit. Any question of the validity of a takings challenge to these provisions can be eliminated by requiring any station applying for a renewal of its license to agree to provide the media benefits outlined in the bill.

VI. Recommendations for Modifications to S. 1219 Within the Bipartisan Framework of the Bill

As noted at the outset, S. 1219 is not the ideal campaign finance measure. We understand, however, that certain of our preferences, like public financing and reducing the individual contribution limits, are off the table. On the other hand, we have a number of recommendations for improving the bill that we think should gain broad support from both sides of the aisles. We are committed to working with the sponsors of the legislation to fine tune this bill within the bipartisan framework they have outlined. A number of our recommendations are included in the House version of the legislation, H.R. 2566.

A. Independent Expenditures

Like personal spending, independent expenditures have a special protected status under the *Buckley* decision. A system of voluntary spending limits must recognize that independent expenditures are on the rise and draw the rules accordingly. S. 1219 includes provisions designed to assure that independent expenditures are truly independent and that they are adequately and promptly reported to the FEC during the campaign. We believe that the Committee should consider augmenting the media benefits available to candidates against whom independent expenditures are made, or increase the spending limits for such candidates on a dollar for dollar basis—the approach taken in H.R. 2566. This amendment would be fair, and would also prevent the fear of independent expenditures from dissuading a candidate from agreeing to abide by the spending limits.

B. Leadership PAC's

Contributing to so-called "leadership PAC's" or "member PAC's" are yet another way for special interests to curry favor with Senators. These PAC's are often nothing more than political slush funds. A Public Citizen study last year found that of the \$111 million contributed to such PAC's between 1984 and 1994, only about 15 percent was then contributed by the PAC's to federal candidates. As drafted, S. 1219 would not ban such PAC's if the overall PAC ban is held unconstitutional. H.R. 2566 includes a separate provision allowing federal candidates and officeholders to control only one political committee, namely his or her campaign committee. This Committee should include a similar provision.

C. Large Donor Aggregate Limits

Special interest money does not just come from PAC's, it comes from large donors as well. We believe that requiring Senators to raise more money from small donors will bring them closer to their constituents. An aggregate limit on the amount that Senate candidates can accept in donations greater than \$250 will further that goal and reduce the influence of wealthy individuals who often have ties to corporate interests. H.R. 2566 limits large donor contributions to 25 percent of the spending limit.

D. Lobbyist Contributions

There is considerable public support for completely banning campaign contributions by lobbyists. Lobbyist contributions are easily construed as seeking a quid pro quo of legislative action. There have even been reports of lobbying firms increasing the compensation of their principals with the expectation that each individual lobbyist will make the maximum amount of political contributions allowed by law. We believe that banning such contributions would be unconstitutional, but a more narrowly tailored provision that reduces the amount that lobbyists can give to Senators they lobby may well pass muster. We would support such a provision as a way to reduce the amount of "interested" money

and prevent corruption of the legislative process. H.R. 2566 includes a provision that limits lobbyist contributions to \$100.

E. Alternative Protections Against Wealthy or Nonparticipating Candidates

As noted above, one benefit provided to candidates who agree to voluntary limits and face an opponent who declines to accept the limits is the right to raise contributions of \$2,000 per election, rather than \$1,000 per election. As a policy matter, we disagree with this approach since it will magnify the importance of the tiny segment of our population that is rich enough to make large political contributions.¹

On a more practical level, however, we question the efficacy of such a provision. Major infusions of personal spending may come too late to trigger this provision to be of any use. Candidates will have trouble raising additional money fast enough to remain competitive. And the participating candidate could spend only an extra 20 percent of the limit regardless of how far over the limit the opponent goes. We would favor offering additional media benefits as a way to better address the problem.

Thank you again, Mr. Chairman, for the opportunity to testify. We look forward to working with the Committee to finally make campaign finance reform a reality in 1996. You can do no greater service to the public and to our democracy than working diligently to accomplish that goal. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Claybrook. I thank the entire panel and we will proceed to questions.

I am going to make two general observations and then defer to my colleague, and then on my second round of time I will ask some questions. Two general observations, and I will be putting this in the record, but I find this a very interesting set of facts and they should be incorporated in any debate on this important issue. What are those facts?

Let us start with the point that I like Ms. McBride's statement that public anger is at a boil about the many aspects of this, and I think one being the amount of money being spent in politics. So let us look at the total sum in 1992 for Congressional campaign spending. Presumably, that is all the candidates. I will have to check the basis on this, but that is all the members who sought seats in the House and the Senate. In 1992, there was \$678 million expended.

Now to 1994, again, all the Senate candidates, all the House, incumbents, challengers, whatever, \$724 million. That is roughly, give or take a few dollars, let us say three-quarters of a billion dollars for all the members of Congress.

Now let us look at the consumer spending. For pet food, \$5 billion. For bottled water, \$3 billion. For yogurt, \$2 billion. For potato chips, \$2 billion. Commercial ads totally in 1992, \$44 billion, of which automobile ads were \$3 billion.

I will ask you what place those facts take in this debate as I come back for my round of questions.

¹

A Citizen Action study showed that political donors giving \$200 or more to a candidate in 1992 constituted 1/6 of 1 percent of the voting age population. According to the Statistical Abstract of the United States, in 1989, only 11 percent of American families had a household income of over \$75,000. Those who are in a position to make political contributions of more than \$1,000 undoubtedly have an even greater income.

My second point, and I want to make sure, Ms. McBride, back to your reference to our distinguished majority leader, Mr. Dole, he is one that urged me early on to get on with these hearings. We have discussed it since that, in November, the timing of it, and he in no way placed any restriction by suggestion or otherwise on how I or the committee proceeds with this hearing, so he is in favor of this process that we are now launched on.

But I again want to draw a little bit on my personal experience as a means to try and determine how best this committee can do its work, and that is I would like to refer back to a very interesting chapter in my life, roughly 1974 or 1976, when I was designated by the President as one of the national leaders of the dialogue on our Bicentennial of the United States. Then a second chapter of my learning occurred when we celebrated the Bicentennial of the Constitution of the United States. I worked with the distinguished Chief Justice of the United States who was tasked, again by the President, to lead that national debate.

But in both of those debates, we tried to encourage as much consideration by the general public, again, returning to the village greens across our beautiful nation, the town halls, the fire hall, the city council chambers, or wherever these debates take place, and hopefully, these debates would take place such that the legislators, be they Congress or State, are listening and not dominating in any way the debate.

I am hopeful that quickly some national organization, maybe one of these that has the billions to spend on pet food or bottled water or yogurt, could step forward and quickly put together what I found useful during the Bicentennial and again in the Constitutional Bicentennial, a handbook for the town meeting, in other words, a little bit of a how to do it. It does not have to be a voluminous thing. In other words, here are some of the issues and here is what has been said on them and here is how a town meeting could address it. Get it out there so that we can begin to get some of this valuable contribution from the grassroots level back into the Congress.

If it is at a public boil, Ms. McBride, and if 60 percent are deeply concerned, I think that is very fertile ground in which to plant some seeds to get further debate, and I think we could early on begin to get that advice coming up from the grassroots.

I am very hopeful that out of this session, someone will take note of the desire of the chairman, and perhaps there are others, to stimulate more debate at the grassroots level and to do it in a manner that will quickly get to the Congress.

I see, Ms. McBride, you have a comment. Go right ahead.

Ms. MCBRIDE. Yes, thank you so much. That is such a good point that you raised, Senator, and I wanted to just mention that two weeks ago in Concord, Massachusetts, a very historic place, there was a town meeting on campaign finance reform—

The CHAIRMAN. Good.

Ms. MCBRIDE. —to which 1,000 people showed up. There were Republican and Democratic members there, Congressman Marty Meehan, Linda Smith, Chris Shays, two Republicans and a Democrat. A thousand people came and talk and cared about this issue. Congressman Jim Leach is now going to be hosting one.

A number of the cosponsors of the bill are doing just what you are doing. They are taking this issue out to people, and what we are hearing from them is very valuable. A lot of what I have talked about has been from being out there, and you are absolutely right. But this is going on, and I appreciate your raising it and having the chance to talk about that this is happening right now across the country.

The CHAIRMAN. That is an excellent example. I profess not to have knowledge of that meeting having occurred, nor do I have knowledge as to whether or not there was some consensus, and that is the second step. No matter how exciting the meetings may be, some consensus has to be derived and transmitted back to the Congress if we are going to utilize that and incorporate it in our thinking, and that should be a very fair and objective process of assessing if there was a consensus and how to transmit it back to the Congress.

In other words, my experience in this was fairly extensive during the Bicentennial of the United States, and likewise during the Bicentennial of the Constitution.

Ms. CLAYBROOK. I think it is fair, Senator—Ann and I were both there at this meeting—and I think it is fair to say that there was one consensus. It is hard when you deal with all the individual provisions to say there was consensus on each and every one of those, and some of them are, as you know, a little bit difficult to understand.

But there certainly was consensus that there needs to be change in the current system and there certainly was a feeling from the questions raised and what people said that there was an alienation by the public about the two classes of politics, the people, and those who fund it, and that is the way they look at the system.

There is less than one-half-of-one percent, or there is a tinier than that proportion of the American public who actually make contributions to political campaigns, and then there is the vast majority of the American public. There is a distinction felt between the two and a presumption, at least in every focus group or public opinion poll that I have seen, not done by ourselves but done by Republican and Democratic pollsters and independent organizations and so on, that says that the public resents the control that the money givers have over the legislative process, and that is the corrupting influence that the Supreme Court refers to in their evaluation of this issue.

The CHAIRMAN. I am going to make one quick comment and then turn to my colleague, but I think those debates have to be guided in some respect. It is really a waste of time to debate

something which is the clear consensus in the legal community it is unconstitutional. I mean, that might be a way for—

Ms. CLAYBROOK. What is unconstitutional?

The CHAIRMAN. Just take a provision which is very fervently embraced by the majority in the town meeting.

Ms. CLAYBROOK. Let us say PAC's. Most people want PAC's banned.

The CHAIRMAN. Just bear with me. I want to be fair in the allocation of time. But let us just take in general terms whatever principle.

Ms. CLAYBROOK. Right.

The CHAIRMAN. But there is a consensus it is unconstitutional.

Ms. CLAYBROOK. Right.

The CHAIRMAN. And if they all said, this is what we recommend and it comes to the Congress, Congress might have a cop-out and put together a bill it knows will fall flat in the Federal courts, and Congress could raise its hand and say, hey, we did our job and points at the Federal court.

I think there is an obligation on us to determine and evaluate what can pass the Federal court test and determine what building blocks we can incorporate in the bill, and at this point, I yield to my colleague.

Ms. CLAYBROOK. Could I comment on that for one second?

The CHAIRMAN. We are going to have adequate time.

Senator MCCONNELL. You are absolutely correct, Mr. Chairman. You cannot just ignore the Constitution. My good friend Joan Claybrook completely misrepresents what the *Buckley* case said. The Supreme Court did not say that spending had any corrupting potential. It did not say that at all. All it said was the individual contribution of one to another might have corrupting potential, and the goal of Public Citizen and the goal of Common Cause has been what is directly in conflict with that decision, overall spending limits on campaigns. You have said for years that is your goal.

Now, the chairman has said there needs to be a dialogue out around the country, and I agree with him and I think that certainly Common Cause and Public Citizen have participated in that dialogue over the years. One of the things I have noticed is that in election years, Common Cause and Public Citizen seem to be more active in States where there are people currently running for office, and I was curious as to whether it was your intention in 1996 to concentrate your activities in States where there are Senators up for reelection, particularly those who may not agree with you on this issue.

Ms. MCBRIDE. No, sir. In the town meeting question that I am talking about, this right now is very much where we are concentrating our efforts. And these are town meetings that are put on—or have been so far—been put on by sponsors of the bill, both Democrats and Republicans. We also always activate our members to write their members of Congress. And so it is not

targeted in terms of, I guess, the assertion that you are trying to make.

Senator MCCONNELL. There has been a curious coincidence between activity in the States of members up for reelection in past cycles, who have been opposed to what you were trying to do. And I was just curious as to whether or not you had sort of targeted any States this year where there are members who are not very sympathetic with your effort for special grassroots activities.

Ms. MCBRIDE. Well, Senator, I do not think that you find that in the past. And you will not find it this year. Common Cause is a non-partisan citizens group. We have been extremely critical of Democrats. We were, of course, extremely critical of Tom Foley in the last Congress, for his holding up campaign reform in the House. We have been critical of the President when he warranted it. And we have been critical of Republicans.

We are not partisan. And we are not out there during an election year, as you seem to be implying, to affect elections. We are out there to get campaign reform passed this year. And we will criticize those that we feel deserve it, no matter what their party is. And we will lobby where we think we can get votes, and put together the needed votes to get this passed.

Senator MCCONNELL. Are you a 501(c) or a 501(c)(4)?

Ms. MCBRIDE. We are a 501(c)(4). We have no 501(c)(3). We are a 100-percent lobbying organization.

Senator MCCONNELL. Right. Ms. Claybrook, getting back to the issue of what is a special interest, would you call the trial lawyers a special interest?

Ms. CLAYBROOK. Yes. I think that they fit within my definition. A special interest is an investor. They invest in the political system with money. And they expect to get something from it.

Senator MCCONNELL. So you would say the trial lawyers get a return on their investment when they contribute to your organization; is that what you are saying?

Ms. CLAYBROOK. When they contribute to what?

Senator MCCONNELL. To your organization.

Ms. CLAYBROOK. We do not take their money.

Senator MCCONNELL. You do not take any trial lawyers' money?

Ms. CLAYBROOK. We do not take any government money, or any business money or trade association money.

Senator MCCONNELL. You do not get any money from any plaintiff's lawyers, for Public Citizen?

Ms. CLAYBROOK. We take individual contributions. We do not ask them whether they are a corporate executive. We do not ask them whether they are a laborer. And we do not ask them if they are a trial lawyer.

Senator MCCONNELL. So you are not prepared to say you do not get money from plaintiff's lawyers for your organization.

Ms. CLAYBROOK. I am sure that we do. I was challenged on this by the Wall Street Journal about 3 years ago. I went through all of our contributions over \$100, because I figured those were the ones they were interested in, and found that we got about one-half of one percent of our budget came from people who were trial lawyers. And I so wrote them. And they printed a half-page article about it.

Senator MCCONNELL. Do you disclose your budget?

Ms. CLAYBROOK. I am sorry?

Senator MCCONNELL. Do you disclose your contributors in your budget?

Ms. CLAYBROOK. Do we disclose the names of our contributors?

Senator MCCONNELL. Do you publicly disclose—

Ms. CLAYBROOK. The names of our contributors?

Senator MCCONNELL. Yes.

Ms. CLAYBROOK. No. We abide by the Supreme Court—

Senator MCCONNELL. So there would be no way for anybody independently to verify that?

Ms. CLAYBROOK. We abide by the Supreme Court ruling on association and the freedom of association under the First Amendment, the First Amendment that we have been talking about.

Senator MCCONNELL. Right.

Ms. CLAYBROOK. Right.

Mr. MASON. Why does not that apply to people who—

The CHAIRMAN. Mr. Mason, I would suggest you draw that mike up very firmly.

Mr. MASON. I am just curious on this point. We are all in favor of disclosure. But I am wondering why the freedom of association and the anonymity that goes with that does not apply to people who contribute to political campaigns. I do not know the answer to that. I am just curious.

The CHAIRMAN. Well, that is a very broad issue which could be addressed, I think, at another time. It might be in the context of this series of hearings.

Ms. CLAYBROOK. Well, could I give him one suggestion?

The CHAIRMAN. Yes.

Ms. CLAYBROOK. Which is that the contributions are being made to government officials who have the power of decision making over the lives of our whole society. And the decision was made by the Supreme Court in evaluating the legislation, that that was a proper disclosure.

The CHAIRMAN. That is the final decision making, which is an act of Congress, signed by the President. But indeed, as an integral step to that, is the dialogue—and I think you could beg the question that the dialogue is as important in many respects as to how the final outcome is adjudicated by the Congress and the President in an act. In other words, that is my view. So I think this argument is on both sides of that association case. As a

matter of fact, this committee will be taking up the subject of—and I will raise it in my questions; I do not want to impinge on my colleague here—on disclosure of journalists and so forth.

Senator MCCONNELL. One other line of questions, Mr Chairman, to Professor Smith. You were suggesting, I think, in your testimony that it is pretty difficult to quantify how much is too much, when you are talking about expression in a democracy. The Speaker has said he did not feel there was enough money spent in politics. That happens also to by my view; that there is a clear correlation between the amount of money spent and the amount of turnout and interest, and that that is a good thing.

I think you have done some work, have you not, on the effect that tighter contribution limits would have on the process and outcomes? Have you done some work in that area?

Mr. SMITH. Yes. It is something I have looked into in some detail in recent articles for the Cato Institute and in the Yale Law Journal.

Senator MCCONNELL. Could you give me a quick summary of some of your findings?

Mr. SMITH. It is pretty clear that restricting spending does first benefit incumbents, although Ms. Claybrook suggested otherwise. In fact, in 1994, for example, a majority of challengers for Senate seats raised more than the limits that are set in S. 1219. And again, I reemphasize that the only challengers who beat incumbents spent more, as did the next-closest challengers.

I also emphasize that all of the challengers who spent less, lost. But all of the incumbents who spent less than the limits of S. 1219, won. So clearly, it is anti-incumbent. The other thing is, as you mention, how much is too much? An effort is made to suggest that this is corruption. And it is hard for me to see how providing information, getting information out there, is corruption.

When it is suggested that we need to limit the amount of spending, we need to remember that the original 1974 FECA reforms which have caused so much harm, originally wanted to limit spending in Senate races to an amount that I believe, if it were ratcheted forward today with cost-of-living adjustments, would be about \$300,000 for a Senate race, an amount that I do not think even these people would any longer suggest is an amount that makes sense. It is not nearly enough.

Senator MCCONNELL. It is a guarantee the incumbent or some celebrity won every race; right?

Mr. SMITH. That is right. That is who is going to win. The person who starts with the big name advantage is going to have a huge advantage. And I think their desire is to cut off information to voters. I do not think you can put it simpler than that; hence, the constant attack on soft money. Soft money, for example, does not draw on candidate time, attempting to raise soft money, not to the extent that direct contributions do.

It does not have the danger of quid pro quo corruption, because the money is not going directly to a candidate. It helps equalize incumbent challenger bases because parties who get the soft money can direct it to areas to make sure that races get competitive, where they have a chance. None of the various harms that they suggest are so terrible apply to soft money which, by the way, using figures from the Center for Responsive Politics, a group which generally agrees with the position I think has been taken by Ms. Claybrook and Ms. McBride, is less than 10 percent of total spending.

And yet, they are after soft money, as well. And I think that tells us their real goal is to drive money out. And when you drive money out, you are driving information out to voters.

Senator MCCONNELL. And also, is it not arguably a transfer of power? Let us take a situation where you have got Candidate A and Candidate B, both under severe spending restrictions. Candidate A is endorsed by every major newspaper in the State in the last week of the election. Is that not an expression in support of a campaign? Does that not dramatically advantage Candidate A and give more power to the newspapers?

Mr. SMITH. Well, you bet it is. But it goes even further than that. For example, in the last several days—and leaving aside any merits of the candidate, per se—Doonesbury, Gary Trudeau's strip, has been pounding Steve Forbes. Now, what would it cost to run an advertisement the size of Doonesbury in all of the major newspapers that run Doonesbury? It would cost an enormous amount.

Senator MCCONNELL. So you cannot level the playing field in a free society. You can simply shut one group up, and thereby advantage another group; right?

Mr. SMITH. And the best way to try to level it, to the extent you can, is to make sure that as many people as possible get to play in the game and that we have as many voices. Mr. Chairman, you have said several times that we want to get a dialogue going. And I wholeheartedly agree. In fact, one of the problems here is that there has not been a dialogue.

For 25 years, Common Cause has lobbied the American people, virtually unopposed, basically saying that you are crooks, that this Senate is corrupt and that the House is corrupt, that you are not motivated by ideology, by party agenda, by what your constituents want, but that you are motivated by money. This hearing is really—and the forum up in New Hampshire two weeks ago, which I was at and was put on by the Center for New Democracy. And I commend them for that. To my knowledge, it is really the first effort anybody has made to start the dialogue. So we do need a dialogue. And moreover, we also need a dialogue in the political arena, as well. And we are not going to get that by trying to limit the amount of information that goes out to people.

The CHAIRMAN. I think that Ms. McBride should be allowed an opportunity to be heard.

Ms. MCBRIDE. Thank you very much, Mr. Chairman. I appreciate that.

The CHAIRMAN. And then Senator McConnell will return to his questions.

Ms. MCBRIDE. I have heard for a long time about spending limits hurting challengers. Well, we live right now in a system in which there are no spending limits. And therefore, it should be by, if you follow logic, a system in which challengers would have a terrific chance. In fact, what you have under the current system without spending limits is a system where incumbents get reelected at 90 percent rates.

Now, this logic simply just does not follow. Professor Smith says that the people who will get elected under spending limits are those with big name advantages. Well, the people who get elected under the current system are the people with big name advantages. And that is incumbents. This current system is so unfair to challengers, all you have to do is look at the results of these elections. There is no system.

People always say, "Gee, spending limits are an incumbent's protection bill." Well, I sure wish I could get the challengers to vote on campaign reform, because we would have had it a long time ago. You have to look, Senator, at the Presidential system, with these same cries of if you pass a Presidential system with spending limits, you will just have incumbents locked in.

You had, for the first time under the system, an unknown peanut farmer beat an incumbent President. Then you had a retired actor beat an incumbent President. And then you had Bill Clinton beat President Bush. I mean, you cannot say that the system of spending limits in the Presidential race has been an incumbent's protection bill. It has been a bill with an enormous turnover, while in Congress you have 90 percent reelection rates for incumbents. They are the well-known people. Incumbents are the ones that benefit under this system. And I am willing to roll the dice and give challengers a chance. And that is why we support S. 1219.

Senator MCCONNELL. I would like to return to my questions for Mr. Smith. As a political person who has won four races, two of whom were against entrenched incumbents, I dispute that notion. Virtually every political scientist in the country disputes what Ms. McBride has just said. In fact, you can stipulate that this bill will dramatically advantage incumbents.

Incumbents have a lot of advantages. They also do not have as many as they used to. And if you look around here the last 4 years, this is a dramatically changed place. There are a lot of new people here, a lot of dynamism in the system. But that is really not what I wanted to touch on. The last question I had for you, Professor Smith, is the question of the pernicious influence of out-of-state contributions.

I mean, I have heard during this debate over the years that it is somehow evil for a person in a state who cannot vote for a Senator to contribute to that Senator, that this is somehow a corrupting influence, even though an overwhelming majority—I would argue 98 or 99 percent of what we do around here affects the entire country. It is not state-specific. We are members of the United States Congress, voting on measures that affect the entire country.

Why would it be considered inappropriate for a group of Jewish citizens, for example, in New York, to get organized and send a bunch of money to Louisiana to try to defeat David Duke? Now, in what way, conceivably, could that be some kind of pernicious influence on the system, for Americans, regardless of where they may reside, to participate in the campaigns of people who are going to vote on things that affect their every day life?

Mr. SMITH. Well, Senator, I think you make an excellent point, that this is the United States Congress. And I think that efforts to limit money coming in to specifically from the district tends to guarantee you what might be called sort of a Balkanized Congress, in which people are beholden to whatever the dominant special interest is in their area, with little way to break that.

As long as you have disclosure, again, it seems to me fair that if voters do not like the fact that a candidate is funded by out-of-state interests, they can take that into consideration.

Senator MCCONNELL. All they have to do is pick up the FEC report.

Mr. SMITH. They do get to go in. And they get to vote. And there are newspapers to expose that, and candidates sometimes expose that. So I agree wholeheartedly. I would like to add just one more comment, if I may, not directly to that question, but to the earlier point.

I agree. I think this can be stipulated as an incumbent protection system. I think you are right, that virtually every political scientist agrees with that. The one thing I would note is that incumbent reelection rates hit record highs since the 1974 amendments to the FECA. And it is those amendments which limit contributions, which make it harder for challengers to raise money, that have been a tremendous part of it.

So you cannot say, in other words, the current system—

Senator MCCONNELL. If I may interject, the system that Common Cause and Public Citizen like so much, the Presidential system, in fact helps two groups of people, the well-off and the well-known, because as a result of the \$1,000 contribution limit in the pre-convention phase, a regional candidate who is thoroughly credible cannot exploit a regional base because he cannot get enough individuals to contribute enough to get him off the ground.

So who are the front-runners? Steve Forbes and Bob Dole. The well-off and the well-known benefit under the current

Presidential system that Common Cause considers such a wonderful success story. Now, I think what cries out for reform is the Presidential system. And Mr. Chairman, I understand we are going to be having hearings on that, as well, specifically on that.

The CHAIRMAN. The Senator is correct, because I think an understanding of that system, to the extent it has succeeded or failed, is integral to this issue.

Senator MCCONNELL. Absolutely. The one election in America where we have spending limits—they do pass constitutional muster because they are truly voluntary—has been the race in which there has been the most dramatic increase in spending. And it has snuffed out the ability of regional, credible candidates to compete. So that is a story for another day. But I certainly would not concede that the Presidential system is a great American success story.

Mr. SMITH. If I can say—

The CHAIRMAN. I am going to pick up on my questions now. And then Senator McConnell will have a further opportunity.

I think integral to any analysis of this issue, and any legislation that goes forward, is an examination of the disclosure laws as they presently apply to the Congress—that is, the members—and indeed, perhaps the organizations which traditionally come in and take an active role in the elections. In other words, the cries for an even playing field—what about independent organizations which get heavily involved in campaigns? Should they have a different standard of disclosure than the candidates themselves?

So let me start with Ms. Claybrook. Go the other direction on the panel, for a change. What would be your advice to the Congress, particularly this Senate committee, on modification of the current disclosure laws as relate to members and such additional disclosure requirements as they relate to organizations or other entities that traditionally have taken a strong role in election campaigns?

Ms. CLAYBROOK. I would like to clarify, Senator, what kind of organizations you are talking about. Are you talking about independent expenditures?

The CHAIRMAN. Well, let us talk about independent expenditure organizations.

Ms. CLAYBROOK. Right. Okay. Well, first of all, I do believe one form of disclosure that is required, but not really enforced in the present law, is the revelation of who the person is who is giving the money, because there has been a lot of attention given to the political action committee money because it is fully disclosed.

Much less attention has been given to individual contributions because there is a requirement that you say who you are and what your affiliation is. A lot of people do not do that. Many candidates do not push their contributors to reveal that. And so, it is very hard to analyze what money is coming in.

So I do think that a change there which would put some limitation on the ability to contribute, if you do not disclose who you are—or on the candidate—to some way, in a constitutional way, that would permit that. I do believe that.

I have never been involved in the independent expenditures. I do not know whether or not there are any limits on the requirements for disclosure for you. I think you do have to disclose independent expenditures; don't you?

Ms. MCBRIDE. Well, there should be additional, in my view, additional disclosure. And one—

The CHAIRMAN. Now, wait a minute. I want to hear you very clearly. You say there should be additional disclosure requirements?

Ms. MCBRIDE. There are under S. 1219, which tries to—

The CHAIRMAN. Well, I am talking about generic. Because the law today, and such laws or bills that may come before the Senate—should we have strengthening of disclosure?

Ms. MCBRIDE. Yes. We should.

The CHAIRMAN. And that would include independent expenditure organizations?

Ms. MCBRIDE. I think, yes, we should have increased disclosure. Right now, one of the concerns is, are these spending efforts truly independent, and what you should disclose and know. Are they using common vendors? In other words, are the people who are independently spending using the same ad agency? In fact, there are ways that they could be coordinating. So we believe that.

We also think one of the real dangers about independent expenditures is that you can be blind-sided right at the end of the campaign.

The CHAIRMAN. You are correct. I was going to address that.

Ms. MCBRIDE. A candidate is going along, doing well, understanding what his or her opponent is spending. And then you are just blind-sided. And so again, I think you would have to look at, consistent with constitutional requirements, how you can get those independent spenders to disclose what they intend to spend at some earlier point in the campaign, so the candidate can understand and be prepared for this.

So, we would look. Again, we would want to look at it in terms of the Constitution, but think that there should be additional requirements. These independent expenditures are not good for the process, and it really is very unfair to candidates. And we would look for ways to deal with them. We also think that the opponent—I mean, the candidate who is having expenditures spent against him or her—should be given a way to respond, particularly in the last few weeks of the campaign. Could they get additional free TV? Is there a way to do that?

The CHAIRMAN. Well, you are broadening the question. But we all know from our own experience that suddenly an

independent expenditure organization can come up overnight and form itself.

Ms. MCBRIDE. Right.

The CHAIRMAN. Put the XYZ logo on the ads, boom, it is out there. And say a week before the election, nobody knows where the money came from. And it may have influenced, in a material way, the outcome of that election. So should not we have some requirements—perhaps legally we could do it—before you take the airwaves or use regulated media outfits like television or radio, or so forth, that you file with an appropriate authority, FEC, whatever it may be, a disclosure of your contributors? And then, and only then, can you release that ad. So at least the public would have a chance to come quickly find out who is behind this ad.

Ms. MCBRIDE. Right. And I also think, Senator, while sometimes it appears that they happen overnight, they have been planning this for a long time, to blind-side the candidate. And so the question is can you get disclosure earlier? And I do not know. In a consistent way, can you get something earlier? That is the question.

The CHAIRMAN. Well, this is an issue which I will certainly look at. Now, Mr. Mason?

Mr. MASON. Thank you, Senator Warner. I want to go back to just one broader point about the problem with trying to address political problems through finance regulations.

The CHAIRMAN. Well, now, you can address what you want maybe on your nickel. But the question before you is your opinion on disclosure, current law, as it relates to members of Congress, and current law such as it may or may not be relating to other very active participants that get involved.

Mr. MASON. I think there may be some minor things that you could do to tighten up on disclosure, such as what was mentioned about professions, and so on like that. But I think trying to get too far in the regulation of this area is a real problem. In the campaign finance bill that passed the House 3 years ago now, there was a provision which would have effectively required people who wrote a letter to the editor of a newspaper to register in advance with the Secretary of State of their State. Very poorly drafted, it was dropped later on.

But this is the kind of thing you get into, because one of the tests was a communication that goes to a certain number of people.

Senator MCCONNELL. It was dropped only after an extensive debate on the floor.

Mr. MASON. No. It was dropped in late in the process.

Senator MCCONNELL. Did it stay in?

Mr. MASON. It passed the House. And that was the year I believe there was no conference agreement. But there are lots of problems when you try to get into this area. And I also point out

that there is a recent Supreme Court decision protecting the right of anonymous political pamphleteering.

And so, you run into some real First Amendment problems when you start talking about individuals or groups coming out and being active in the political process, and you trying to—even to require them to disclose who they are. And the Supreme Court says, at least at some level, there is a protection for that.

Mr. SMITH. I would agree with everything that has been said.
[Laughter.]

The CHAIRMAN. Fair enough. Now, why don't you take a question? And I will come back.

Senator MCCONNELL. Well, I am basically through, Mr. Chairman, other than just to point out that I think one of the sort of steady voices during this whole campaign finance debate over the last few years has been David Broder, who is certainly not considered a conservative by any stretch of the imagination, but who has pointed out, I think, the deficiencies of the Presidential system. And only yesterday took on and, I thought, thoroughly dissected, not only the book by Charles Lewis, called *The Buying of the President*, which has just come out. He is with something called the Center for Public Integrity, which Broder describes as modestly titled. And he also takes on *Front Line's* exercise in exaggeration, he called it, which is apparently supposedly some sort of expose—I did not see it—on PBS earlier this week, which alleged that everybody in Congress is simply being purchased by these limited and disclosed contributions that are on all of our FEC reports.

Broder says the American political system is much more complex, much more open to influence by any who choose to engage in it than the proponents of the auction theory, which we have sort of heard propounded here today by some, than the proponents of the auction theory of democracy understand or choose to admit. By exaggerating the influence of money, they send a clear message to citizens that the game is rigged, so there is no point in playing. David Broder says that is deceitful. It is dangerously wrong to feed that cynicism. At the end, he says how about changing the kind of journalism that tells people that politicians are bought-and-paid-for puppets, and you are a sucker if you think there is a darn thing you can do to make your voice heard. That is David Broder, about this whole debate and about those who have been screaming about the influence that citizens who choose to participate in the political system, make a contribution to the candidate of their choice, which is fully disclosed on the FEC report, that that is somehow a purchase of influence, it seems to me, is patent nonsense. And that is, of course, at the root of this whole debate.

Mr. Chairman, I would just like to ask that David Broder's column appear in the record in its entirety.

The CHAIRMAN. Without objection, that will be done.

[The article is included in Materials Submitted for the Record.]

The CHAIRMAN. I will now close the hearing. But I want to make sure that everyone who appeared today understands that the record will remain open for 10 days for such submissions as you may wish to make. And I once again extend an open offer to the private sector in America, educational institutions, to try and stimulate, as quickly as possible, more debate at the grassroots level, and devise a means by which the products of that debate can be well-informed, to begin with, and to come back up to the Congress.

Just maybe, one of these multi-billion dollar advertising groups could just provide a little wherewithal to heat the town hall, and maybe have cup of coffee and a doughnut during the course of the evening. And let us get on with it. And then, a means by which we can collect those ideas and get them back up here. I think it is a tremendous challenge. And I hope perhaps you agree, and you could be instrumental in getting somebody to do this.

So we have had a very good hearing today. This is the first of several. And I welcome solicitation, advice, whatever, from all those listening to this first hearing as to the content of subsequent hearings. We are of an open mind, at least the chair is, on this issue—very anxious to see this committee, in a very responsible way, discharge its obligations, first to the Senate and then to the American public. Thank you very much.

[Whereupon, at 12:58 p.m., the Committee adjourned, subject to the call of the Chair.]

CAMPAIGN FINANCE REFORM

WEDNESDAY, MARCH 13, 1996

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in Room SR-301, Russell Senate Office Building, Hon. John Warner, chairman, presiding.

Present: Senators Warner, Stevens, McConnell, Ford, Pell, and Dodd.

Staff Present: Grayson Winterling, Staff Director; Edward H. Edens IV, Special Assistant to the Chairman; Bruce E. Kasold, Chief Counsel; Virginia C. Sandahl, Chief Clerk; Mary Louise Faunce, Administrative Assistant to the Staff Director; Kennie L. Gill, Democratic Staff Director and Chief Counsel; and John L. Sousa, Democratic General Counsel.

Senator MCCONNELL. [Presiding.] Good morning, everyone. Senator Warner, the chairman of our committee, had a longstanding medical appointment and should be here shortly and has asked me to begin the hearing.

I see that Congresswoman Smith is here. I expect that Congressman Shays and Congressman Meehan will be here shortly.

An essential point which will be illuminated today is that the campaign finance debate is not just about us, the Members of Congress. It is not just about candidates, Republicans, Democrats, or otherwise. It is not just about billionaires and millionaires buying headlines. And the debate is not just about money. At the core of this debate is freedom of speech. It is about who gets to speak and how much, candidates and citizens who participate in our democracy through campaign contributions, volunteer campaign work, and independent efforts.

Millions of Americans choose to get off the political sidelines. They vote. They communicate with Members of Congress, as our staffs, who are buried under an avalanche of mail and telephone calls, can surely attest. Millions of Americans write letters to the editor, of which only a fraction are ever published. They volunteer on campaigns. They stuff envelopes, man telephones, go door to door, wave campaign placards at busy intersections,

and attend rallies. They put campaign bumper stickers on their cars and campaign signs in their yards.

Some Americans do all of these things and contribute money as well. Many more Americans, too busy for time-consuming volunteer activities, simply write checks, contributing their own hard-earned money directly to candidates of their choice.

There are also some who wish to influence congressional elections throughout the Nation—understandably so, since most of the actions affect the entire Nation and they belong to groups who bundle their contributions. Such groups include the pro-choice Democratic EMILY's List, the pro-life Susan B. Anthony List, the pro-choice Republican Wish List, and the abortion-neutral Republican organization RENEW.

These groups are fairly recently on the political scene and, led by EMILY's List, have brought many women into the political sphere for the first time. What these groups are doing in terms of getting American women involved in politics is, of course, terrific. However, I must confess that I wish EMILY's List would have a little less success in the future.

These Americans are involved. They care about this country and the issues of the day. They look for candidates with qualities they desire and some degree of ideological compatibility. And then they contribute money and time to help them win.

These are patriotic Americans. These are active citizens in a vibrant democracy. They may gripe and moan like the rest of us, but they are also out there trying to change things by backing candidates' campaigns and causes.

They are mixing it up, and that alone is admirable and honorable. It is what America is uniquely all about.

Some people participate by contributing to the Republican National Committee, the Democratic National Committee, or United We Stand America or a labor union PAC or a company PAC. Many contributors are unaffiliated with any group, but the fact that a contributor is part of a group does not change the nature of that person's contribution.

It takes a whole lot of people contributing for all kinds of reasons to fund a modern congressional campaign. This is participation we ought to be encouraging, not vilifying and demonizing. We should applaud participation through voluntary contributions, just as we do voting and volunteer activity.

A sure way to dilute the influence of the so-called special interests, a label of dubious validity, is for more Americans, many millions more, to get in the game with their own contributions and effort. Millions of Americans times a few dollars each, the cost of a movie or a box of popcorn, is a whole lot of money. More contributors giving more money to more candidates to spend on even more competitive campaigns means more democracy.

Yet all the momentum for reform, to the extent there is any, is toward regulation, restriction, and prohibition. That is why I would characterize S. 1219 and H.R. 2566 as bureaucratic boondoggles. These bills are blueprints for bureaucracy. They epitomize big Government. They can only be considered improvements if you equate big Government with good Government.

S. 1219 and H.R. 2566 would have an army of bureaucrats at the Federal Election Commission empowered to crawl over every campaign and group and individual daring to participate in this great democracy. S. 1219 and H.R. 2566 are to democracy what the President and Mrs. Clinton's health care plan was to medicine. Hopefully, they will meet a similar fate, because Government-run democracy is no better for America than Government-run health care.

About the only campaign finance claim that Common Cause and company makes which contains a grain of truth concerns the so-called money chase. While it is far from the all-consuming task they contend, fund-raising has become increasingly challenging in the past 20 years because the contribution limits were never adjusted for inflation. When the \$1,000 individual and \$5,000 PAC limits were established over two decades ago, a new Ford Mustang cost \$2,700, a gallon of milk 65 cents, and the average new house \$32,000. In the context of a multimillion-dollar Senate campaign, even the maximum contribution is a drop in the ocean. A typical contribution is far less than that. And while big-money fat cats are much derided, contributions to the Republican National Committee averaged out to \$45 per contributor.

It is true that, the facts notwithstanding, people are cynical. That is hardly a revelation, and it is to be expected considering they are fed a steady diet of cynicism from the media, many candidates, and even some Members of Congress. This is why polls on cynicism do not particularly impress me. It would be good news—a miracle, even—if the American people were not cynical. A CBS reality check the American people will never see is one proclaiming, in fact, that most Members of Congress are honest, hard-working, and doing what they think is right for the country as they faithfully try to represent the competing interests and ideologies of their constituents.

The vast majority of Members are not and never have been under an ethical cloud, but that fact is not deemed newsworthy. So we should not pass undemocratic, unconstitutional, bureaucratic campaign finance reform in response to a misperception, however widespread that may be. What we should do is change the perception, and we can start by being honest about the situation.

I for one will not be a party to trashing First Amendment political freedom for the sake of short-term political gain. Our oath of office was to uphold and defend the Constitution, not the

latest poll. There is no reform which can improve on the one the Founding Fathers instituted two centuries ago, the First Amendment to the Constitution. The Founding Fathers' legacy was to give citizens the right to political speech, without fear of reprisal from a Government agency.

Campaign finance schemes such as S. 1219 and H.R. 2566 are contrary to this great legacy. Where campaign finance reform is concerned, the Supreme Court will be the final arbiter should anything pass. But Congress should not punt on a matter of such import as this. We should have the grace, good sense, and courage to do what is right and consistent with our Constitution, not just what consultants tell us is popular at any given particular point.

Let me also add, before turning over to my colleague, Senator Ford, for any opening statement he may want to make, that the following groups are opposed to S. 1219 and to H.R. 2566: the Republican National Committee, the National Republican Senatorial Committee, the National Republican Congressional Committee, the National Taxpayers Union, the National Right to Life Committee, the National Rifle Association, the American Civil Liberties Union, the Christian Coalition, the Direct Marketing Association, the National Association of Broadcasters and the National Association of Business PAC's.

Let me now call on my friend and colleague from Kentucky, Senator Ford.

Senator FORD. The Rules Committee begins its second in a series of hearings this morning on campaign finance reform. I appreciate the efforts of Chairman Warner for calling this hearing and for the enthusiasm in this issue. I also want to say welcome to our witnesses this morning and thank them for agreeing to participate in this morning's hearing. I am not sure that you feel too comfortable already, and you haven't had a chance to make your point. But I am glad you are here, and I think that your positions need to be heard, and I look forward to that.

In particular, I would like to welcome a friend of mine, Mrs. Linda DeVries, from Louisville, who is here on behalf of the American Nurses Association.

These are important hearings. I hope that the Rules Committee does not lose this opportunity to report a bipartisan campaign finance reform bill to the full Senate. The time, in my opinion, for reform has come. You can hear all this potato chip, McDonald's stuff that you want to, but the time for reform is here.

In my home State of Kentucky, we just completed our first Governor's race with spending limits. Even the Republican candidate said that he would not have been a candidate had not we had term limits. And he praised term limits even—I mean campaign spending limits even in defeat.

Overall, those reforms worked well in Kentucky for the candidates and the voters. The Kentucky system has a general election spending cap of \$1.8 million. Everyone agrees that the Kentucky system still has some problems and some loopholes that need to be addressed. But on the whole, I think the candidates and the electorate approved of the spending limit plan.

In fact, spending limits in the Kentucky race changed the overall course of the election. With a limit on the amount that could be spent, both the Republican and Democratic candidates had to revise their campaign play book.

Spending limits put a premium—and I underscore premium—on debates and on joint appearances across the Commonwealth and de-emphasized the role of high-priced consultants and slick advertising. Overall, I think most Kentuckians were pleased with the result because the candidates came to their Rotary luncheons, their breakfast meetings, and other events and debated the issues confronting the Commonwealth. The net result was a better informed electorate and a better campaign.

One candidate told me that he drove, slept in the car, because he couldn't afford to spend the money to fly because he wanted to get to the next location so he would be participating in a debate.

Too much of the debate on campaign finance reform is centered around what we cannot do. I hope that we can start focusing on the reforms that we can make. The committee should take the time to examine the various proposals contained in the McCain-Feingold bill, and others, to see what reforms we can make a reality.

I have attended countless hours of hearings on campaign finance reform. I can go back to the archives of the committee and produce volumes of testimony and printed records of hearings where the committee received testimony from Members and professors, campaign consultants, and other election experts. The fact is we can easily identify the problems. The question is: What are the solutions?

Senators McCain and Feingold have offered what they believe is a solution. It may not be a perfect solution to the problem, but this committee has the opportunity to take that bill and others before us and craft real and effective campaign finance reform.

This is an issue that receives too much talk. They talk the talk, but they don't walk the walk. I understand from my grandchildren that that is the right thing to say today.

Just the other day, it was reported that the House leadership has indicated that they are prepared to schedule floor time this spring to consider campaign finance reform. I think it is time for us on the Senate side also to act.

I want you to know that I am committed to working with this committee to fashion a bipartisan bill which we can bring to the

Senate floor this spring. I hope that we can move forward and make campaign finance reform an accomplishment of the 104th Congress.

I thank you, Mr. Chairman.

Senator MCCONNELL. Thank you, Senator Ford.

Senator FORD. Let me make one point. You said that the average contribution was \$45 in the Republican—I don't know whether it was the Republican National Committee.

Senator MCCONNELL. Yes.

Senator FORD. I am afraid you didn't read The Post just the other day. It was more like millions and hundreds of thousands that were contributed. There was a long list. That is not \$45 per individual. Those were companies and that was soft money.

Senator MCCONNELL. I would be happy to debate this issue with my colleague anytime, but I think what we would like to do this morning is to go ahead and hear from the witnesses.

Congresswoman Smith, would you like to lead off?

TESTIMONY OF A PANEL CONSISTING OF HON. LINDA SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON; HON. MARTIN T. MEEHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS; AND HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. SMITH. Thank you and good morning. I am honored to be here. I really have admired the Senate and several of you over the years, but from afar.

As you know, I am a freshman in the House of Representatives, and I was really impressed this morning that the Senators would invite us to come and testify before you.

Quite obviously, though, with the bill that I am sponsoring and supporting, we have some differences of views. But it is great that we are in America, that we do debate these. And, Senator Ford, I am excited to hear that you are willing to work on a bipartisan bill, because I truly believe, differing some with both of your statements, that the one statement I heard this morning that resonates with America's people is that bipartisanship is sorely needed and wanted to bring down the stridency.

People are very concerned, as I travel the Nation, that we don't talk; we just posture against each other. So as the bipartisan committee has traveled, we have realized that the bigger issue is that we get together and come up with solutions. Hearing that you want a vote in the spring and the House wants a vote in the spring is very reassuring.

Where we don't agree is whether we can educate the American people enough to convince them the system is good.

Maybe I am not used to it yet because I have only been here 14 months, but I don't know that I want to be.

Let me tell you what offended me and gave me some problems when I first arrived. This isn't image. Probably education will not change my position. All the freshmen, and I would imagine the Democrats, too, were brought in and trained, not in how to pass good legislation, but how to raise your first \$100. I was presented with the group with the first invitations to the first events for my colleagues that were across the street. Those events across the street were set up with chairmen of committees as the sponsoring individuals for the freshmen, as well as special interests. We were then trained in how to have people call those folks to come to our fund-raisers using the name of the Chair. We were also told how to make sure that we learned to "dial for dollars" so many days a week and that the first year we needed to spend at least 3 to 5 hours a day, at least 3 days a week.

I looked at that, and I thought the focus is off. But also how can you separate yourself from the money and the vote scenario in the minds of the people? I think that this practice is what has put incumbents in a very difficult position in educating the American public that this is something we want.

Making a decision that I wouldn't do that, I then looked at the whole system, and I found out why incumbents—we, myself—were not too inclined to want to change the system. We have a four-to-one advantage in PAC money and money that flows to us, most of it given in checks here in Washington, DC. Now, this isn't image. This is what we do each night.

But if I gave four fund-raisers to raise my half a million dollars that I needed to raise in the first 2 years, then I had to go to nearly 200 more because we go back and forth to each other's fund-raisers. That is what makes a good fund-raiser.

That appeared to me to be something I didn't want to do, but then I realized people were locked in and had to move their families. Now, Senators are here 6 years, the House is 2; but it was very difficult to find where to put your weekends. Do you stay here with your family if you moved them, or do you go home? But you had better find a way to spend some time with them.

The whole system locks us into either living here or having trouble figuring out how we deal with our time when we spend 15 hours a week raising money, or more.

One thing that has become very clear to me, in conclusion, is we have to change the system, or we are going to continue to have a 10-to-9 ratio of men. Incumbents have a re-election rate of around 90 percent. It depends on the House or Senate. If we run, we will have 95 percent. We are told to build our war chest quickly and to build up a wall of money around ourselves from those that come before us at these events each night. If we raise enough money for a war chest, we will be surely able to stop anybody from running against us.

Should we do that, then, we will be assured of a 95 percent re-election rate, and, sure enough, 98 percent in 1988, but normally 95 percent if we run again.

Now, a handful drop out or retire or pass away, but you are going to have a 90 percent re-election.

Now, there have been some good groups that have helped women, like EMILY's List, Susan B. Anthony, but they are playing with the challenger races. They are playing in the races where there are open seats, and they are getting used to working there and having some success. But they will only have a 5 percent success in challenging the incumbents, and I would ask any of them to take a look at where they have taken a woman against a male incumbent and won.

We will continue. It will take nearly 70 to 80 years to get to where women are not a minority here, because we cannot break through the brick wall of money built around the incumbents, of which 90 percent are male.

If we are going to change the system, we are going to have to be willing, as incumbents, if we care about gender equity, to open up the doors and allow ourselves to take down that brick wall of money we have built around ourselves. And it makes sense. You can get it pretty easily here. And let the American people in.

In the guise of free speech, we protect ourselves. I am ever much as concerned for free speech, but when we use it to protect our incumbency and our 95 percent re-election rate, I think it rings hollow. And I would challenge you to try to show the American people, take them into our fund-raisers, show them our invitations, and show them the dialing-for-dollars techniques, and convince them that that has anything to do with their free speech.

Thank you.

[The prepared statement of Mrs. Smith follows:]

PREPARED STATEMENT OF HON. LINDA SMITH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman and members of the Committee:

Thank you for allowing me the opportunity to come before the Committee to share my views on what I think is the single most important factor contributing to voter frustration and distrust in government. That is the political money system that rolls out a red carpet to special interest contributors yet shuts the door on the American people. I realize that some Members of Congress may prefer to ignore the whole controversy around campaign finance reform because of the complexity of the problem and the partisan battles that have been waged over the issue. But I made a pledge to the American people that I would work to change the system that has eroded the power of individual voices and amplified the voices of special interests.

I have often spoken of my initial reaction to the Washington, DC "fundraising machine." The machine is fueled by a campaign financing system that takes newly-elected Members of Congress, entices them with appointments to key committees, puts them in touch with the right special interest groups to equip them with a strong fundraising base, and trains them from "day one" to raise enough money to scare off any potential challengers and ensure their reelections.

It's a system that takes Members of Congress away from their constituents and produces addiction to special interest money.

Americans are sick of a system that so often turns a listening ear toward such well-funded interests as the tobacco lobby and defense contractors, but fails to recognize the voices of the very constituents that put elected officials into office. It is a system that keeps incumbents in power and dependent on the checks from groups and wealthy donors that stock the incumbents' reelection warchests. Even in the Republican revolution invoked by the 1994 elections, House incumbents still enjoyed a reelection rate of over 90 percent. Given the way the system is set up, it is not surprising to see so many incumbents opposing our bipartisan efforts to clean up the system.

There are absolute consequences of the current system. While women make up over 50 percent of the population we will still be locked into a minority status in Congress as the current system locks out women and locks in incumbents—where men now outnumber women by 9 to 1. We have often heard of the glass ceiling which refers to a woman's inability to break through to the top in corporate America. But in Congress, it is more like a brick wall—bricks of money incumbents get from those coming before us to put up solid walls of protection around us so no challenger can get in.

Women are able candidates. We have seen in open-seat races how groups like EMILY's List and National Right to Life have bundled contributions or used other resources in the current system to help their candidates compete. But even their grassroots efforts have resulted in limited successes as the current system continues to lock in incumbents. We need a new system that truly brings campaigns back to grassroots America and empowers individuals to take a part in the political process. The voices of grassroots America will truly be amplified when the large PAC checks and soft money loopholes are eliminated.

As the debate heats up in Congress on the issue of campaign finance reform, we will see many trying to nitpick the bipartisan proposals, H.R. 2566 in the House of Representatives and S. 1219 in the Senate. The Members that have signed on to our bipartisan, bicameral proposals do not claim to have a perfect bill. What we do have, however, is a package that will favor neither party and will return campaigns back to the people. H.R. 2566, the bipartisan package that Representatives Christopher Shays, Marty Meehan and I have introduced, contains the key elements to clean up the current system.

Our legislation will break the stronghold that special interest money has on the political process. H.R. 2566 eliminates political action committee (PAC) influence on the federal election process, ends the soft money system so that money spent by the political parties is subject to the current federal contribution limits, limits large donor contributions to no more than 25 percent of the election cycle spending limit, requires 60 percent of individual contributions to come from a candidate's home state, limits lobbyist contributions to \$100, ends the practice of "bundling," sets voluntary spending limits, and provides benefits such as broadcast and postage rate discounts to candidates who agree to the spending limits.

Finally, I would like to close by stressing the importance of a bipartisan solution to campaign finance reform. The American people are fed up with watching Congress play political games with this all-important issue. I am encouraged by reports that seem to indicate that both the Republican and Democratic leadership may be developing plans to reform the system. I look forward to reviewing those proposals soon and hope they will stimulate discussion and quick action so that Congress can send a real reform proposal to the President for his signature. My biggest concern, however, is that history will repeat itself. We can no longer afford to have Congress pass a partisan bill that favors one party over another and fails to deal with the major flaws in the current system. If that happens, a bill will never be signed into law and the American people will be the ones who lose. I urge this Committee's leadership in passing a bipartisan proposal that will return campaigns to the American people and restore accountability and trust in our political system.

Again, thank you for the opportunity to testify. I look forward to answering any questions you may have for me.

Senator McCONNELL. Congressman Meehan?

TESTIMONY OF HON. MARTIN T. MEEHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MEEHAN. Thank you very much, Mr. Chairman, and thank you for the opportunity you give all of us to testify before your committee. It is somewhat ironic that I am on the left-hand side and Mrs. Smith is on the right-hand side, because Mrs. Smith would be considered conservative and to the right and I would be considered to the left and more liberal. We call it progressive today. And Chris Shays, of course, is in the middle where he rightly belongs. So we are delighted that it worked out this way. But I think it illustrates the broad-based support that we have for changing the way campaigns in this country are financed, because there are many, many areas where Mrs. Smith and I would disagree that we could talk for hours about how we disagree. But we agree on this issue and have worked diligently together on this issue.

Our polls tell us that the American people have lost faith in their Government. They are disenchanted. What was once heralded as the most representative democracy in the world, the United States Congress, is now being ridiculed on editorial pages and newsworthy magazines across the country.

Special interest money has corrupted both the electoral system and the people's perception of their Government. Let me give one example.

On Monday, The Washington Post reported that our political parties took nearly \$2 million from Philip Morris and RJR Nabisco last year, only to turn around and try to influence the process of looking at how to legislate and regulate issues related and pertaining to tobacco regulation and subsidies.

Now, who among us can deny that we need to do something about advertisement directed from tobacco products to children? And so how is Congress still in a position where we are funding subsidies to tobacco programs; we are in a position where we are generating billions of dollars in health care costs from the consequences of many of these addictions. Yet special interests interfere with Congress' ability in many cases to represent constituents.

Enormous political donations have distorted the system that was intended to equally represent all of its citizens. Other relevant examples are in the current budget debate in Washington. Congress may have passed a balanced budget 4 months ago in the absence of powerful special interests. Year after year, programs that have long worn out their usefulness are preserved in the budget. Everything from tax loopholes to energy, agricultural subsidies, to a mining law that was passed in 1872, have been left untouched, while many other

programs—education and training programs for the working poor—have ended up on the chopping block.

Even if we get a balanced budget this year, odds are that it won't be completely the fairest to all Americans because of the role that special interests play. In the last Congress, I joined with a group of freshmen Democrats in an effort to bring long overdue change to our election laws. In retrospect, it was no surprise that our proposals for campaign finance never got passed by the Congress. Both parties' leadership let them die in conference committee, and I learned then that the only way that meaningful reform is enacted is for Members to put aside their partisan differences and work together to make it happen.

Last October, I joined with my Republican colleagues who are here today—Chris Shays of Connecticut and Linda Smith of Washington—in authoring and introducing the first major piece of bipartisan campaign finance reform legislation in the House of Representatives in over a decade. Our bill would eliminate PAC's, cap lobbyist donations, require 60 percent of campaign contributions to originate in a candidate's home State, eliminate the loopholes in large political party contributions, and set voluntary spending limits. It would also offer candidates discounted broadcast times and mass mailings if they sign a pledge and agree to spend less than \$600,000.

If enacted, the Bipartisan Clean Congress Act of 1995 will halt the special interests' influence in Washington and clear the way for truly representative democracy that our forefathers had envisioned 200 years ago.

Now, it is difficult to change a system that is so favorable to incumbents, giving them easy access to PAC and lobbyist contributions, helping them, as Congresswoman Smith said, win re-election 90 percent of the time. Incumbents receive 70 percent of the total of PAC funds each election cycle, compared to 12 percent for challengers, and less than 18 percent of those running for open seats. Members of Congress of both parties are reluctant to change the rules which provide them with huge fund-raising advantages over their opponents.

That is why Representatives Smith and Shays and myself have initiated a series of national town meetings on this bipartisan act to clean up Congress. The response has surprised our greatest expectations. We had our first meeting in Concord, Massachusetts, in January. Over a thousand people attended a forum at 9 o'clock in the morning on a frigid New England morning. Since then, we have successful events in different parts of the country, most notably in Seattle last month, which was hosted by Linda Smith and Senator Murray.

Mr. Chairman and members of the committee, our failure to pass significant electoral reform has damaged our ability to eliminate wasteful and harmful subsidies and corporate welfare that are stuck in the budget. Our inaction has also helped to foster growing public discontent with Congress. My colleagues

and I are here today before you because we believe that the rising cost of elections and the growing size of special interest donations has corrupted the democratic process.

We are willing to admit that our approach is not perfect, but as you know, perfect and perfection is often the enemy of the good. We all know what happens when campaign finance reform gets mired in election year politics. Both parties try to push the initiative that will aid their party's candidates and damage opponents' advantages. That is what makes this bipartisan clean up Congress act so significant. Neither party gets the advantage.

Thank you again for this opportunity to testify, and I, like my colleagues, would be happy to answer any questions that Members of the Senate would have.

[The prepared statement of Mr. Meehan follows:]

PREPARED STATEMENT OF HON. MARTIN T. MEEHAN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MASSACHUSETTS

Good morning. Thank you, Mr. Chairman and members of the Committee, for giving me the opportunity to testify before you today.

Our polls tell us that the American people have lost faith in their government. They are disenchanted. What was once heralded as the most representative democracy in the world, the United States Congress is now being ridiculed in editorial pages and newsworthy magazines across this country. Special interest money has corrupted both the electoral system and the people's perception of their government.

Let me give you one example. On Monday, The Washington Post reported that our political parties took nearly \$2 million from Philip Morris and RJR Nabisco last year only to turn around and try to objectively legislate on issues pertaining to tobacco regulation and subsidies. Who among us can deny that cigarettes are bad for your health? And so how is it that Congress still funds subsidies for a tobacco program that generates billions in health care costs from the consequences of long-term tobacco addictions? Special interests interfere with Congress's ability to represent its constituents. Enormous political donations have distorted a system intended to equally represent all of its citizens.

Another relevant example is the current budget debate in Washington: Congress may have passed a balanced budget 4 months ago in the absence of powerful special interests. Year after year programs that have long worn out their usefulness are preserved in the budget. Everything from tax loopholes to energy and agriculture subsidies, to a mining law that was passed in 1872 has been left untouched—while education, training and programs for the working poor are on the chopping block. Even if we do get a balanced budget this year, odds are it won't be one that is fair to the vast majority of Americans.

In the last Congress, I joined with a group of freshman Democrats in an effort to bring long-overdue change to our election laws. In retrospect, it is no surprise that our proposals for campaign finance reform never got passed by the Congress. The House leadership let them die in conference committee. I learned then that the only way that meaningful reform will be enacted is for members to put aside partisan differences and work together to make it happen.

Last October, I joined with my Republican colleagues who are here today, Chris Shays of Connecticut and Linda Smith of Washington, in authoring and introducing the first major piece of bipartisan campaign finance reform legislation in the House of Representatives in over a decade. Our bill would eliminate PAC's, cap lobbyist donations, require 60 percent of campaign contributions to originate in a candidate's home state, eliminate loopholes in large political party contributions and set voluntary spending limits. It also would offer candidates discounted broadcast times and mass mailings if they sign a pledge to spend less than \$600,000. If enacted, the Bipartisan Clean Congress Act of 1995 will halt the

special-interest influence in Washington and clear the way for the truly representative democracy that our forefathers envisioned 200 years ago.

It is difficult to change a system that is so favorable to incumbents, giving them easy access to PAC and lobbyist contributions and helping them win re-election over 90 percent of the time. Incumbents receive 70 percent of the total PAC funds each election cycle, compared to less than 12 percent for challengers and less than 18 percent for those running for open seats. Members of Congress—of both parties—are reluctant to change the rules which provide them such a huge fundraising advantage over their opponents.

That is why Representatives Smith, Shays and myself have initiated a series of national town meetings on the Bipartisan Clean Congress Act of 1995. The response has surpassed our greatest expectations. At the first meeting in Concord, Massachusetts in January, over 1,000 people attended our forum at 9 o'clock on a frigid New England morning. Since then, we have held similarly successful events across the country—most notably in Seattle last month hosted by Linda Smith and Senator Murray.

Mr. Chairman and members of the Committee, our failure to pass significant electoral reform has damaged our ability to eliminate wasteful—and harmful—subsidies like the tobacco program. Our inaction has also helped to foster the growing public discontent with Congress. My colleagues and I are here before you today because we believe that the rising cost of elections and the growing size of special interest donations has corrupted the democratic process.

We are willing to admit that our approach is not perfect. But as you know, perfection is often the enemy of the good. We all know what happens when campaign finance reform gets mired in election year politics. Both parties try to push initiatives that will aid their party's candidates and damage their opponents' advantages. That's what makes the Bipartisan Clean Congress Act so significant—neither party gets the advantage.

Thank you again for the opportunity to testify. I will be happy to answer any questions you may have on the need for election reform or specific provisions of H.R. 2566.

Senator MCCONNELL. Thank you, Congressman.
Congressman Shays?

TESTIMONY OF HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. SHAYS. Thank you, Mr. Chairman.

First, Mr. Chairman, let me just express my admiration for all three of you as Senators for allowing us to comment. Also, candidly, I have tremendous admiration for Members of Congress who sometimes take what I think is not perceived as the popular view because they believe it in their hearts. The most difficult thing for me is to hear someone say something publicly and then privately try to go in the opposite direction. And I thank all of you for being consistent and allowing us the opportunity to have a true dialogue.

I take enormous pride in the fact that this Congress passed congressional accountability which gets Congress under all the laws that we impose on the rest of the country, that we passed gift ban, and that we passed also lobby disclosure. And I take tremendous satisfaction that it not only was bipartisan, but it was bicameral. We wouldn't have gotten to first base if it hadn't

been Democrats and Republicans and Senators and Members of the House working together.

You all know the general gist of this legislation, but I just want to emphasize what I think is quite significant. First off, we deal with something that has to be dealt with: the ability to limit spending and do it constitutionally. We do it constitutionally because we make it voluntary. We don't require anyone to limit their expenditure. We simply say that if you want to get certain benefits, you will come under some limits.

I think if we fail to go forward with voluntary limitations, what you will see is a very strong movement to amend the Constitution of the United States to require campaign limits. If you don't do this voluntarily, you are going to see the Constitution of the United States amended. So I pray that we recognize that this is a valuable way to deal with the issue without amending the Constitution.

Secondly, I think it is very important that we get at what really has become in some cases quite obscene. Political action committee money was intended to allow special interest the ability to present their case and to disclose what they have done. But we have seen political action committee money that has teamed up with other political action committee money, and that in one day a Member of Congress can get \$100,000. Ten PAC's linking up, they all agree basically to do the same thing, and you end up with gigantic sums all of a sudden happening. In anticipation of what someone can raise through PAC contributions, they then start raising a lot of money up front in anticipation, and it becomes this extraordinary spiral. So we limit political action committee money.

I think the biggest value of doing it, though, is we eliminate what I think are the most obscene things that happen in this place, and those are the political action committee fund-raisers that basically are a shakedown of lobbyists. We have to be candid here. Senator, you were very candid. I am going to be candid. It is a shakedown of the lobbyists. And I didn't really visualize that until I was first elected in 1987. I did one political committee fund-raiser. I raised \$10,000. I didn't think that was so bad until I learned that most people in 1987 raised \$40,000. So I said to my staff: Why did we raise \$10,000? Why does everybody raise \$40,000? Then I learned that I am supposed to hire a political consultant. I said, well, let's look into that.

We looked into hiring a political consultant. What did they tell me I needed to do? They said I needed to leave my office, because, of course, I couldn't make campaign calls from my office, and I needed to go to the NRC, the National Republican offices, and there would be phones set up. Or I could go to a private office somewhere, and there would be phones set up, a long list of lobbyists whom I interact with and I am supposed to call them up and I am supposed to say, Hey, Mitch, I am having my fund-raiser next week, and I know it must have been a

mistake, but I notice you are not on my list. And, you know, you and I have been such good friends, and I have been so supportive of what you have wanted that I clearly know that that is unintended. And, Mitch, can I just sign you up? I will look forward to seeing you next Thursday. I know it only cost \$150 2 years ago, but it is \$300 now, and you know that. At least it is not \$500 or \$1,000, what the leaders charge.

And you just go down the list, and all those people come. Then you speak to some of the lobbyists, and they say, I go to three or four or five a night. Now, they don't do it with their own personal money. They would go bankrupt. They do it with this big fund called PAC money.

To me, if we do nothing else, we have got to end the shakedown of lobbyists that takes place in this place. The only way I know how to do it is to eliminate the PAC contributions.

We also eliminate bundling, and I was thinking, What is so wrong with bundling? In fact, I never really benefitted from it until this year. I had a nice rating with a special interest, and they said they would like to send out a letter. And they were going to raise money for me, but they weren't going to have them sent to my own office. They wanted to bundle it all together so they could give me \$10,000 or \$20,000 or \$30,000 so that I would know the extraordinary support that they have provided, that I would put together the money in terms of the name of the lobbyist who would hand it to me.

We want to eliminate bundling, and obviously what we have to eliminate—and this is where I fought my own party. They are willing to go after and look at controlling PAC money and they are willing to look at some of the other issues like bundling, but they are not willing to look at soft money. Soft money has become the narcotic of this place. And if we don't wake up, we are going to be so captured by it we will never ever be done with it.

The Ledyard Tribe, an Indian tribe in Connecticut, contributed about \$400,000 to one political party and \$200,000 to another. And I guess it is not a coincidence that whenever they need access to the President or Members of Congress, they have it like that.

We have got to find a way to end this soft money that is just putting an unlimited amount of money by individuals, by corporations, and by lobbyists. And so I just think that whatever you do, whatever bill you do in the Senate, it has got to have a way to voluntarily and constitutionally limit campaign funds in terms of what is spent. It has got to find a way to eliminate or severely restrict PAC contributions. It has got to put an end to the lobbyist fund-raisers that are nothing more than a shakedown of lobbyists. And it has got to end this insidious amount of money that is coming from soft money.

I will just end by saying when I worked on this bill, some of the people in my own party said, you know, we like everything, but you can't turn off the soft money. Well, if we don't turn off

soft money, it is just going to get bigger and bigger and bigger and bigger.

I look forward to discussion of this bill and to have a dialogue about philosophies and whatever else the three of you and others would like.

Senator MCCONNELL. Senator Stevens has to go. He wanted to ask just one question, so I am going to yield to him out of my time.

Senator STEVENS. I appreciate that. I am on my way to another meeting, but I saw that this hearing was taking place and I appreciate the three of you coming over to give us your views.

I am concerned, however, about your proposal in that it will put at risk a lot of very small television and radio stations. In my State, we have more radio and television stations per capita than any State in the Union. They are all just hanging on by their fingernails. I see that your proposal would say that our radio and television people would have to sell to any candidate who agrees to limit their spending, television and radio time at 50 percent off the lowest unit rate, and further that those candidates would be able to mail at the lowest third class non-profit rate.

On what basis would you shift the cost of campaigns from contributors to the shareholders of small radio and television stations and to the rate payers in the Postal System?

Mrs. SMITH. I would be glad to answer that. First of all, let us take the postage rates. It is closer to what you give to charities already, so there is question as to whether or not you want to make those people the same as charities. We think it is a small amount compared to what it does for challengers. Challengers have some great problems with costs up against wealthy or incumbent candidates.

The other one, on radio, there is language that we had hoped was good enough—but we can beg your help with this—that allows the smaller stations to be exempted if there is a hardship. So if that is not—

Senator STEVENS. Who would then pay for it, Mrs. Smith? In my State, with all those small stations—

Mrs. SMITH. In your State, you might have a different circumstance.

Senator STEVENS. Who would pay for the candidate who is running against me if you limit—

Mrs. SMITH. And what I am saying is you would not. You would have an exemption. The stations, the smaller stations could get an exemption on hardship for small and for economic considerations. But again, if that language was not tight enough to make sure that that particular State and those stations for both candidates were exempted, we would be very happy to have you take a look at it.

Senator STEVENS. I would be glad to take a look at it, but I will tell you, I have looked at it time and time again. Every time we get one of these proposals, the answer in terms of not paying for

it with taxpayers' money, because no one really wants to do that—

Mrs. SMITH. There would not be any—

Senator STEVENS. —is to pay for it with someone else's money.

Mrs. SMITH. Senator Stevens, no. What would be exempted, those stations, for both candidates, no one would pay for them. The stations would be exempted. I am not making myself clear.

Senator STEVENS. I understand that, but it still makes the same point. Someone is going to pay for it or the system will not work in my State.

Mr. SHAYS. Senator, let me just make a comment. We spent over \$700 million in Congressional races and the vast sum of money goes to the radio and television. They make out like bandits in this process. They are the big winners in this process.

What we are saying is that campaign radio and television would be at 50 percent of the charge. This would be lost business if they did not get it. It would simply be unaired time for which they would get no revenue. So I am somewhat at a loss to understand how getting 50 percent as opposed to nothing is a loss.

Senator STEVENS. In the first place, they dominate the air, political advertisements do, and it is not true that there would not be a loss. Any time you run a station and you can only get 50 percent of the lowest unit rate you are charging, you are losing money. I think it is unconstitutional. I do not think the Congress can compel the shareholders of radio and television stations, privately owned, to accept advertising at a rate which is less than their cost.

Mr. SHAYS. We do not ask newspapers to do it because it would be unconstitutional.

Senator STEVENS. That is unconstitutional because of the First Amendment.

Mr. SHAYS. Yes. That would not be unconstitutional, radio or television. We give them the license.

Senator STEVENS. We do not give them a license at all. They buy licenses now, and they will in the future, too. I really think you should rethink your proposal because what you are really trying to do is get away from Federal financing and none of us will support Federal financing over here.

Mr. MEEHAN. Senator, in addition to that, if I could make a point on the mailing aspect of it, one of the things we would do is abolish the franked mail during an election year, which is an undue advantage in House races in any event to the incumbent, and take the money that—

Senator STEVENS. That was part of the bill, Congressman, that abolishes it for the 60 days prior to the primary and 60 days prior to the general election.

Mr. MEEHAN. Right, but we would do it the whole year, in other words, and with the money we would save, then we could pay for the mailing. So you have three mailings that the money

comes directly from, not having franked mail during an election year.

Senator STEVENS. It might interest you to note that my allowances now do not allow me to even mail one—one—piece of mail Statewide in a mass mailing. We have cut our allowances so we do not have mass mailing over here anymore.

Mr. MEEHAN. In the House—

Senator STEVENS. If you want to save money for the taxpayers, cut your mailing allowances. I do not see any reason to get involved in saying that what we are going to do is save the taxpayers money we are already overspending. We have cut our mailing allowances, cut them to the bone over here.

Thank you very much, Senator.

Senator MCCONNELL. Thank you, Senator Stevens.

Let me address a few questions to our witnesses. I think one of the fundamental differences we have is the whole issue of whether too much is being spent. I agree with the Speaker that we are probably not spending enough. I think it is interesting. When people say too much is being spent, you have to ask the question, compared to what? We spent less in the last cycle on campaign spending than consumers spent on bubble gum and we spent less advertising than companies spent on beer and wines. So the whole issue of how much is enough is subject to some interpretation.

The other thing it seems to me that everybody always says we are driving at with this kind of legislation is to curb the special interests, which leads to the question, what is a special interest? I was interested, Congresswoman Smith, in what you view as a special interest.

Mrs. SMITH. First of all, to me, it is more what the special interest does and where we get the money and how we get the money. I am a grassroots political campaigner. I also run grassroots campaigns. It is not what we get, it is where we get it and how we get it.

Special interests should come to you with their voices. That would be anybody with a view. We have political free speech in this country and we want people to come with their views. But would the American people think the tobacco lobby coming with \$50,000 to a member of the Agriculture Committee in pieces from different bundles was freedom of speech? I guess that is what we are talking about here. Is that a special interest that has more freedom than someone else, and do they drown out other people's freedom? They are a special interest—

Senator MCCONNELL. What about the Boeing Aircraft Corporation? Would you call that a special interest?

Mrs. SMITH. Yes, and when they came with very large contributions this year in Washington State, they were not real happy that I voted against the B-2. They are a special interest and they are made up of a lot of people. Again, they should be

able to come with their voice, and our State they should tell their people to vote for or against me.

Senator MCCONNELL. Are their employees a special interest?

Mrs. SMITH. Their people, they have an interest and they should come with their voices and their individual checks. When Boeing gives me \$5,000 around the B-2, that special interest should probably—

Senator MCCONNELL. So as long as the employees give individually and do not band together and contribute, then it is not a problem?

Mrs. SMITH. Again, it is how they give the money and where. If Boeing is here coming to my special interest fundraiser each night or around the B-2 vote, that distorts the issue of influence and you are drowning out the taxpayers in my State individually.

Senator MCCONNELL. So if they hand you the check when you are back home, it is okay, but not up here?

Mrs. SMITH. I did not say that. I said it is where and how, but here especially, it is very bad. We would like to blow smoke over the issue that we take money here around votes, but we do. I know I was not supposed to talk about that when I got here, but we do, and the B-2 vote and that whole vote on the military was held until they got the votes and the contractors walked in with checks. We do.

Is that freedom of speech? In the American people's eyes, no. Does that relate to the Boeing individuals in my district who also care about their job but they also care about their culture, they care about their taxes, they care about education. It is distorted when I get a \$5,000 or a \$1,000 check here around that B-2 vote.

Senator MCCONNELL. But it would be okay if you got it at home?

Mrs. SMITH. That is not what—what I said is they individually at home do just fine because they do not give me the money based on one thing, around the vote.

Senator MCCONNELL. So it is okay if they contribute individually but not okay if they gather together as a group to contribute.

Mrs. SMITH. It is where the group contribution comes and how it comes. That is the problem.

Senator MCCONNELL. So if they contribute individually at home, it is okay. What if all of them came up here individually and said, Congresswoman Smith, we are so excited about what you are doing. We want to contribute to your campaign.

Mrs. SMITH. In my best dream, they would come here and watch what we do, and then it would not be a problem. If we could just bus in the people from all over America and put them around this Capitol, you and I never would go across the street to another fundraiser.

Senator MCCONNELL. Should we buy them bus tickets, then?

Mr. SHAYS. Senator, I would love to weigh in on this. Senator, could I respond to that question?

Senator MCCONNELL. I want to go on to another area.

Mr. SHAYS. You did not get a complete answer.

Senator MCCONNELL. All right. Go ahead.

Mr. SHAYS. First, I would like to just say that the analogy that we spend more on Kleenex or something else than the general election to me is just kind of almost an absurdity. We are talking about approximately a few thousand people spending \$700 million. When people buy Kleenex or something else, you are talking about millions. So I am failing to see that analogy.

Senator MCCONNELL. I would make the observation, Congressman, that we are spending too much is equally absurd.

Mr. SHAYS. No, but the whole concept that when 1,000—failing to understand the difference between 1,000 spending \$700 million, which is what happens in a campaign, and millions of people purchasing a product, I just do not see the connection.

Senator MCCONNELL. Thousands and thousands of people are participating in the process. You know what the limit is.

Mr. SHAYS. Yes, but they are not spending the money.

Senator MCCONNELL. You know what the limit is. The limit is \$1,000 per donor.

Mr. SHAYS. We are not spending the money.

Senator MCCONNELL. It has not been raised in 20 years. It is \$5,000 for PAC's. If you raise a lot of money, it has to come from a whole lot of people.

Mr. SHAYS. Just in response to you, special interests, we are all special interests. There is nothing insidious about a special interest. What makes it a problem is when some special interests have an advantage over other special interests and that is the issue you have to get at.

Senator MCCONNELL. Right.

Mr. SHAYS. I think having rank and file employees on their own contributing to a campaign instead of an individual amassing this fund as a lobbyist—the lobbyist is the one who gives you the money, the lobbyist is the one who asks for your vote, and the lobbyist is the one who is distorting the issue when they combine it with their money.

Senator MCCONNELL. So it is the act of hiring somebody to represent your interests in Washington that sort of corrupts the process?

Mr. SHAYS. No, no. I love the concept of a lobbyist making their case. I just do not think they should be giving you money, too. You need to separate.

Senator MCCONNELL. So you think the courts would allow, then, us to segment out one kind of citizen who is paid to represent people to petition the Congress and say, you have fewer rights than another kind of citizen?

Mr. SHAYS. I did not say that. Why would you make that statement?

Senator MCCONNELL. Does not this bill prohibit a lobbyist from contributing? Is that not correct?

Mr. SHAYS. Under our bill, we limit a lobbyist to \$100.

Senator MCCONNELL. There is a \$100 limit on what lobbyists can contribute. That is my question. On what constitutional theory do you base the assumption that it is okay to say this kind of citizen who is paid to represent these citizens, to represent their interests here, has fewer rights to participate in the political system than the people they are representing? On what basis? Can you cite a case or something that gives some credence to that?

Mr. SHAYS. It is based on the Supreme Court's ruling that the appearance of or the political corruption of the system allows Congress to regulate.

Senator MCCONNELL. The Supreme Court has said that there is no distinction under the "petition to Congress" portion of the First Amendment, no distinction between the rights that a citizen has based upon whether he is paid to represent a group's interest before Washington or whether he or she does it on his own. No distinction whatsoever is allowed.

Mr. SHAYS. What case are you making reference to, Senator?

Senator MCCONNELL. There has never been any case to the contrary.

Mr. SHAYS. That is my point. It is still untested.

Senator MCCONNELL. There have been rulings on this. I can get you the cites. I do not have them in front of me because it is not an area in dispute. There are a clear line of cases saying that you lose no rights under the First Amendment because you are paid to represent people's interests as opposed to getting in your car and coming to Washington on your own. In other words, citizens have a right to band together, hire somebody to go represent their interests, either in a State capital or here in Washington.

Mr. MEEHAN. Senator, if I may weigh in on this, in 1976, in the *Buckley* decision, they clearly determined that political contributions were a form of free speech and were protected by the First Amendment. However, Congress has the explicit authority to limit contributions in order to deter the occurrence or the appearance of corruption. Now, that clearly is—

Senator MCCONNELL. I am totally familiar with the *Buckley* case.

Mr. MEEHAN. So the authority, I think, is very clear there.

Senator MCCONNELL. Sure, and that is why the Supreme Court upheld the limitation on individual contributions from one to another and also upheld the restrictions on political action committees. Whether the Supreme Court would also say that you cannot express yourself at all is an interesting question. That has not been ruled on, whether you could say you could zero out PAC's entirely and say you cannot band together and express yourself as a group, you can only express yourself as an

individual is an interesting question. Most everybody I know thinks there is no chance, zero chance, the Supreme Court would uphold abolition of PAC's. It would be an interesting legal question.

I wanted to go to another area.

Mr. MEEHAN. That is why we have a fallback position.

Senator MCCONNELL. The chairman is here now, I see.

Mr. SHAYS. I was waiting for the chairman to weigh in.

Senator FORD. We all want a chance at you, too, you know.

Senator DODD. Are we going to have a time limit?

The CHAIRMAN. We are going to get control here. First, I tender my apology. I had to have an emergency dental procedure and as such I was necessarily delayed.

Senator DODD. You are talking, though, so that is a good sign.

The CHAIRMAN. Yes, but I am not talking too well, so I am going to be brief.

To make it clear from my perspective, I want this committee to hear the widest possible range of testimony, all aspects. But I also feel an obligation, and I am just speaking for myself now, that we not unjustifiably raise the hopes and expectations that certain options can be explored by the Congress and possibly enacted if we know full well ahead of time that this thing is going to be struck down by the Federal Courts. I think we are doing a disservice to the American electorate were we to do that.

So as we explore the various options, and you have brought forth some instructive ideas here and I thank you for that, we have to make certain that we allow an equal amount of time to explore the legalities.

Having said that, Senator Ford, do you have some questions?

Senator FORD. I have some questions, but my friend from Connecticut is here and would like to make a statement and I yield a portion of mine to him.

The CHAIRMAN. That is fine. Senator Dodd, we are delighted that you are here.

Senator DODD. Thank you very much, Mr. Chairman.

Let me first of all thank our witnesses here this morning. Two of the witnesses will understand if I pay particular attention to one of them, my colleague from Connecticut, Congressman Shays. I want to commend you, Congressman Shays, for your efforts in the House, as well as you, Congresswoman Smith and Congressman Meehan. If there is any question about whether or not there is a bipartisan effort, certainly the presence of three of our colleagues here representing two of the major parties in the other body certainly dispels that myth.

I am a cosponsor of the McCain-Feingold legislation. That does not mean that I am a cosponsor of every dotted "i" and crossed "t". You may not be, either. I do not know your particular position. But particularly in the case, I suspect maybe of all four of us, but certainly two of us, we have some concerns about small State versus large State that you may find, as well.

But let me just say, with all due respect to my friend from Kentucky and the Speaker of the House, who suggest somehow that the problem in this business is that we spend too little and not too much, you must be living on a different planet. This is ridiculous. I am not up until 1998. I have to raise \$16,000 a week, roughly, in the small State of Connecticut for a contested Senate race in 1998. That is beginning 1993, \$16,000 a week. If anyone does not think that does not distort the process around here, they are deluding themselves.

I do not have a magic wand or a silver bullet on how you deal with all of this but I happen to believe that this issue must be dealt with soon. I regret deeply that back in 1993, and I can say this now in a partisan way, when we had both Houses of the Congress and the President, that we should have moved.

I deeply regret we did not move on it. If I had to answer the question of what is the single most important issue that we face that we could deal with in Congress, I would list this issue as the single most important issue because it is our inability to cope with this that makes it difficult for us to deal with the other questions that come before us, in my view. I think it is that pernicious in the legislative process that our failure to address it and to deal with it and to try and reduce the proliferation, both in terms of dollars and time spent, and the filter by which all the decision making process occurs as a result of its existence, makes it very hard for us to get the people's business done.

So I commend the chairman, first, for having this hearing. I really do. I think it is very, very helpful that we are having this here. My hope is, with only some 50 days to go, that we will act soon. I know the President, while I do not know whether he has specifically endorsed the bill, has endorsed at least the concepts of it. We had the handshake between the President and Speaker Gingrich in New Hampshire, going back months ago.

The fact that we missed an opportunity that I regret deeply when we had a chance to do it should not mitigate our desire to try and get something done before this Congress ends. The problem is, if we do not, you get into the next Congress and it never affects the next election, it is always the one beyond it, so we never get around to dealing with it. There is a lot of talking about it but we never, ever deal with it.

There are some legitimate constitutional issues. My colleague from Virginia is absolutely correct. One of the reasons I like the Feingold-McCain bill is it has some options in it, depending upon the constitutional determination of whether or not political action committees can be banned as such.

So I would hope we could move on this. I realize there is a crowded agenda and some are suggesting that this is just not going to come up no matter what. I think that is a great disappointment to many people in this country, that we are not going to get a handle on it. We are limiting the pool of people who can run for public office.

When you try and go out and recruit candidates to run for Congress and run for the United States Senate, if I tell a person not of great wealth and not of necessarily great connection that to run for the United States Senate in my little State of Connecticut, of three-and-a-half million people, 110 miles by 60 miles, that it will cost you in 1998 between \$5 and \$6 million, there are just not many people who can step forward and even consider running for the United States Senate. A Congressional seat is \$1 million. Tell me how many Americans could even begin to think about running for public office with those kind of barriers in front of them.

There is something fundamentally wrong in a system that creates those kind of hurdles. It goes back to the days of the poll tax and the requirement of owning property in this country, de facto limiting to a significant degree the number of average American citizens who can even begin to think about running for the national legislature. That in and of itself ought to be enough reason for us to try and figure out ways to reduce and bring down these costs.

Just consider this, if you will, and this is with limitations on Presidential campaigns. In Arizona, Steve Forbes spent \$100,000 per delegate, roughly, as we calculated. Senator Dole's victory in Iowa cost him about \$35 per vote. Senator Gramm spent roughly \$20 million and won ten delegates. Just the candidates for President will have spent more than \$138 million by the end of January, before a single vote had been cast, \$138 million with the proliferation of advertising and so forth, and that is with the limitations. And not to mention, as my colleagues have already brought up, how much was spent last year.

We had \$724 million spent in 1994 on House and Senate campaigns. I think my colleague from Connecticut's point is we are talking here about a third of the United States Senate, that is 30 Senate races, and more than 400 House races. It is not millions of people going out and buying bags of peanuts here. These are a handful of people, basically, in this country, and most of it being spent on television.

Certainly everyone has the constitutional right to be heard, but obviously with money, the difference is using your own voice or having a Dolby sound system to be heard. If you have the ability to acquire a sound system that allows you to be heard, you drown out the voice of the person who cannot afford but to use only their own voice in a limited way. So the level playing field does not exist when it comes to people's ability to have equal access to the halls of Congress and the halls of power.

Mr. Chairman, I would hope we would try and mark up a bill here and go through the legislative discussion and debate that occurs when markups occur and bring forth ideas that would tailor the legislation in some way, but at least to try and get something going here. If the courts have problems with it, let the courts step in and tell us how we have to change it.

But to sit back and let another Congress go by would be wrong. I want to particularly commend Congresswoman Smith and Congressman Shays because it was, in fact, a great victory in 1994 that your party had, in no small measure built on the premise of reform, particularly in the campaign system. To allow another Congress to go by and not have that occur, not even an effort really toward having it occur, I think it adds to the cynicism in this country, tremendously so.

So I commend both of you for insisting upon this and insisting that the leadership take it under consideration, and again, my compliments to the chairman of the Rules Committee here for having this hearing. This is one of the few forums we have had, frankly, to even have this kind of a discussion about it. So I thank the Senator from Virginia immensely for giving us the opportunity at least to even be heard at this level. My hope would be we could go further, but I thank you for doing what he has done here this morning. Thank you.

[The prepared statement of Senator Dodd follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR
FROM THE STATE OF CONNECTICUT

Mr. Chairman, let me first say that it's a great pleasure to see members from both sides of the political aisle testifying before us today. I know there are those who believe campaign finance reform is a Democratic issue, but the presence of Congressman Meehan, Congressman Shays and Congresswoman Smith, who have all joined me in co-sponsoring bipartisan campaign finance reform, is ample evidence that this is one issue that goes beyond political affiliation.

Reforming the campaign finance system may in fact be the most important issue facing Congress today. More than any other time in our history, the American people's faith in government and our political leaders is disturbingly low.

And who can blame them? One look at the exorbitant amounts of money currently being spent on the presidential campaign trail is enough to make any person shake their head in disbelief. Consider, that in his primary victory in Arizona, Steve Forbes spent an estimated \$100,000 per delegate. Senator Bob Dole's victory in Iowa cost him about \$35 per vote. Of course, that's nothing compared to Senator Phil Gramm, who spent more than \$20 million on the campaign trail, and won just 10 delegates. In all, the Democratic and Republican candidates for president spent more than \$138 million by the end of January—all before a single vote had been cast.

This pervasive, almost epidemic, influence of money on our political campaign system is systematically eroding the American people's trust in their democracy. A recent poll shows that almost half of all Americans believe lobbyists and special interests control what goes on in Washington, not Congress or the President. Sixty percent believe special-interest contributions directly affect the votes of their legislators.

These polls should serve as a wake-up call to all politicians—Democrats and Republicans—of the urgent need for overhauling the laws that govern political campaigns in our country.

This is not a Democratic or Republican issue: this is a bipartisan issue. The present campaign system affects each and every one of us, from the lowest-ranking minority backbencher to the Majority Leader himself. And there will be no progress toward genuine, comprehensive campaign finance reform unless we move together in a bipartisan manner.

Unfortunately, some politicians refuse to recognize the problem. Speaker Gingrich for one seems to believe: "We are literally starving the political process. Our problem is that we spend too little money." It's hard for me swallow the

notion that the political process is "starving" when, in 1994, \$724 million was spent on House and Senate campaigns.

In light of the Speaker's comments I am particularly heartened by the presence of Congresswoman Smith and Congressman Shays. Their presence sends a strong signal to the House Leadership that this issue is a top priority. And that members on both sides of the political aisle can certainly agree on one thing: the desperate need for true campaign finance reform.

Together, we recognize that the corrosive influence of money in our political system is indisputable. The average Senator is forced to raise \$12,000 per week every week for 6 years to run for re-election. Today, all public officials, from the State House to the White House, spend more time raising money than they do serving the public good.

What's worse, those who write the checks often expect to write the laws as well. This past year lobbyists played prominent roles in drafting legislation that preserves our air and water, keeps our workplaces safe and protects the food we eat. Is it any wonder that Americans are cynical toward government? Special interests and big money, simply have too much influence on our political process. It's wrong and about time we put a stop to it.

Today, the political process is drowning in money and the McCain-Feingold bill would take a huge step forward in reversing this trend. By limiting overall campaign spending this legislation will allow candidates to focus less time on raising money and more time on tackling the issues that truly affect the American people. @para8 = Let me be clear on one point: I am not an unaffected bystander in this debate. In 1985, I sponsored one of the first legislative proposals to reform campaign finance laws. As a Senator and now as Co-Chairman of the Democratic Party, I have succeeded by working within the framework of the present system. And over twenty years of public service has clearly demonstrated to me that the current system is desperately in need of reform.

The McCain-Feingold bill leads us in the right direction toward sensible reform. However, it is by no means a perfect bill and some of its provisions need further work. In particular, the financing arrangements would pose challenges for candidates from small states. Additionally, we need to be sure that working people are not restricted from participating in the political process and that grass-roots and volunteer activities are not constrained.

Overall, McCain-Feingold is a good place to start our efforts in ending the influence of money on the political system. That's why I have challenged my colleagues Senator D'Amato, who is Chairman of the National Republican Senatorial Committee, and National Republican Committee Chairman Haley Barbour to join me in endorsing this bill.

Let's show the American people we're serious about reform and that we can use this opportunity to elevate campaign finance reform, in a bipartisan manner, above the normal political fray. I pledge that in the coming days and weeks, I will do everything in my power to bring this issue before the Senate.

The CHAIRMAN. We thank the Senator from Connecticut.

I would like to dwell on just one point and that is in my years in the Senate, it has been in the last 6 or 8 months that we have had the most concentrated attention, both in this committee and elsewhere, on this issue and I do feel it is a bipartisan addressing of the issue.

I do not want to be a part of sending legislation forward that we feel could be struck down by the courts. That is deception of the American public and the system and would just compound, a court decision slamming Congress back, it would just compound the problem in my judgment. I know we are going to work in this committee to see that that is not done.

So at this time, until we have finished this series of hearings, and the number of hearings that we will hold is subject to the

chair's decision in consultation with the ranking member and all members of this committee, but I assure you it is my intention to do an exhaustive effort to bring forth every bit of valued, probative knowledge that we can on this subject, both to define the problem, define the options, and then define as best we can the law such that should there be floor consideration, we can adopt a bill that will be upheld in the Federal Court system.

Does the ranking member wish to make a statement or ask any questions?

Senator FORD. I have just two or three questions. I do not have any further statement. I have probably said more than is necessary.

Whoever wants to answer my questions, or all three of you would be fine. I have a copy of a letter sent by the Speaker, the Majority Leader, and the chairman of the House Oversight Committee to the Minority Leader and ranking Democrat on the committee regarding their intent to act on campaign finance legislation this Congress. How does your bill relate to that proposal of the House leaders? Mr. Shays?

Mr. SHAYS. That bill is still being worked on, but the most gigantic glaring defect is that it does not deal with soft money, and soft money is the individual contributions, the corporate and the labor contributions that simply have no limit to those political parties. So that is the glaring defect in that bill.

Senator FORD. At a hearing of the House Oversight Committee, the Speaker presented views on campaign finance that are, as we say, different from those set forth in your bill. For instance, he is calling for increasing individual contribution limits in order to increase the amount of money into the system. Your bill would reduce and restrict money. Does this recent letter, I think it is dated February 26—I have the letter here somewhere—does this recent letter signal movement by the Speaker toward your position? What about the increased individual contributions? That is a two-prong question.

Mr. MEEHAN. From my perspective, I think that is going in exactly the wrong direction. We need to try to cut the amount of money that is spent in campaigns and I strongly disagree with the Speaker's position on that.

We are in the process of putting together a discharge petition in the House to force there to be a vote if we can get the 218 signatures on a proposal that the Republicans would present, a proposal that the Democrats would present, and our bipartisan proposal. I happen to believe that the bipartisan, bicameral approach is clearly the best. But make no mistake about it. There are people in both branches that would prefer to increase or just who are opposed to this legislation.

We feel this is a critical time because the President has said he is willing to sign it. When President Bush indicated that he would not sign a campaign finance bill because of certain provisions on it, both Houses rushed to pass a bill to get it over

to the President because they knew he was going to veto it. Last year, as Senator Dodd has pointed out, or last Congress, we had a unique opportunity to pass a bill and it died in conference committee.

So I think from my perspective, I am very, very concerned about the possibility that somehow, some way, we will not get this bill on to President Clinton so he can sign it.

Senator FORD. Are there any other comments?

Mrs. SMITH. To address the letter itself, I think it is an encouraging thing because internally, folks were pretty well trying to stall through this election. We are finally getting the money. The Republicans are finally getting a predominance of the PAC money. Many of the PAC's that gave two-to-one Democrat are now giving two-to-one Republican. We are not really inclined to give that up.

It also is very difficult right now in the middle of a campaign time, so the initial was to stall. There is a mixture of feelings as to whether that was from the leadership or from old-timers who have committee chairs, et cetera, who want to keep that going.

But the reality is now there is real movement, serious movement, but it is because so many of the freshmen have—the coalition we have put together around the nation is growing at a very rapid rate. Beyond any group, it is growing, and so it is putting so much pressure on, the freshmen are going to the leadership going, "We are in trouble in our districts and we need some help. We need a bill." So people like Mark Foley and different ones are coming up saying, "Leadership, we have to have a bill. We have this third party group out there ready to support whoever but not me unless I have a bill."

So the reality is they are trying to figure out how to deal with the issue and that was trying to see if they could come up with another bipartisan bill because the Bipartisan Clean Congress Coalition name now is sticking in certain markets. You can poll for it and find it and they are afraid of it sticking. So that is good.

Senator FORD. One of the things we have had problems with is PAC's. I think each bill that I have seen has always had a fallback position. If the courts rule that PAC's were legitimate, then they put a limit of \$1,000 or something similar to that on it, and therefore we had the fallback position.

I have sympathy for EMILY's List. I think it is important that that voice be heard within both parties. I think that we ought to find an innovative way in order to support their ability, which is small contributions, not large, and some way that they might be able to work it.

We are saying no here and yes over here. I come from Kentucky and my friend over here does, too. One of the top five Senators in the history of the Senate was Henry Clay. He was the great compromiser. I would like to follow that. But Clay also said compromise was a negotiated hurt. I want to add to that that we should not hurt one more than the other.

I think EMILY's List in 1994, I looked at it and it was a \$92 average contribution. That is double what my colleagues said the Republicans received. That must be in hard money and not soft money, as we talk about around here. And one of the things I believe that we have done, and we all brag about it, we had gift bans and we treated lobbyists differently than we did others in that. There is a little movement going around that we are going to open up a new restaurant around here called "Legal Cafe", no meal over \$9.99. We are hoping to get to that.

I hope that all three of you will continue your effort. One of the problems we ran into last time in conference was how you would treat a district versus a total State. So you had something that you were looking at that would be peculiar to the House and the other one maybe peculiar to the Senate. That in itself asked for a compromise because we cannot paint with a broad brush.

I like your idea of Boeing, if those people are interested in their job, they are interested in taxes, they are interested in education, they are interested in taking care of their children, and they are going to let you know, and I do not think the boss, other than bringing the money here, is going to tell them exactly what to do.

So I would hope that you would continue. You have to keep up the faith in this. We want to make the system more competitive and we do not make it more competitive if we put it all into dollars.

What if I started out today—I have been here a long time—and somebody like Chris Dodd came to me and said, "Ford, we want you to run for office. All you have to do is have \$6 million." I have never raised over \$3 million, I do not think, in the 22 years I have been here, or the four races. Just to think back, when I ran for Governor, the primary and general election totalled \$700,000. Now they give them \$1.2 million and the candidate only has to raise \$600,000, but it is the limit. They rode in cars instead of flying in airplanes. They were looking for Rotary Clubs for debates or a Lions' Club or the courthouse, and the electorate, I think, became more informed.

Mr. Chairman, we could go on and on, but do we treat lobbyists differently? We have already passed a bill that does.

There is one other thing. This Kleenex or potato chips or hamburger advertisement, it kind of amazes me a little bit that you would even use that argument. I have never seen a talk show talk about the qualities of potato chips or lack thereof, but you sure get a lot of political discussion. You do not see potato chips or Kleenex on Tim Russert's program, on how good one tissue is over the other or one potato chip is over the other and that sort of thing, but you sure do see that. You cannot buy "Meet the Press." You cannot buy "Good Morning America" or "Sunday Morning with David Brinkley", but all those programs are out there.

Now we have had a little shakeup in the free television that Ruppert Murdoch has offered, and I think everybody is beginning to become a little concerned that here is a renegade, maybe, who is offering free television time. So he and Mr. Turner are going to have a little tit for tat.

We are stirring the pot and I think it is good and I want you to keep it up. Thank you for your time and your effort, and come see me.

The CHAIRMAN. We do want to take a little more time, and I want to follow with several questions, and we will hopefully get to the next panel.

Senator MCCONNELL. Thank you, Mr. Chairman.

The CHAIRMAN. I note, Senator Ford, that Colonel Billie Bobbitt on panel 3 will be addressing her knowledge about EMILY's List, and while she will not as I understand be speaking for that organization, she does know a good deal about it. So I look forward to receiving her testimony.

Senator FORD. That is fine.

The CHAIRMAN. Senator McConnell?

Senator MCCONNELL. Thank you, Mr. Chairman.

My friend and colleague mentioned Henry Clay. Henry Clay also said he would rather be right than be President; so in his long career, he had a quote on virtually all sides of all issues.

Senator DODD. That is where he ended up, too. He was right and never President.

Senator MCCONNELL. That is right.

[Laughter.]

Senator MCCONNELL. And he may have said that after his last campaign may have gone down the tubes.

Senator FORD. I think he lacked one vote in the House.

Senator MCCONNELL. I was curious, since your bill calls for spending limits for the 535 congressional races, if you have a sense of how big the Federal Election Commission would have to be—any of you—to monitor and enforce those spending limits. We know that the only spending limits they currently have to deal with are in the Presidential race. It generally takes them—I think the Pat Robertson campaign is still being audited, and I believe that was in 1988.

Do you have an estimate as to what size the FEC would have to be to deal with the enforcement of this bill?

Mr. SHAYS. No, Senator. The answer to your question is that we do not have an estimate, and that is something we will ask the Congressional Budget Office to do.

Senator MCCONNELL. I think we need to hear from the FEC on this issue because we do need to think about the size this agency will have to become in order to deal with this.

Second, I want to get into the provision of your bill with regard to independent expenditures. It is my understanding that under your measure, Congresswoman Smith, if a candidate

benefits from over \$25,000 of independent expenditures, then the spending limit would be lifted for that candidate.

Mrs. SMITH. Yes.

Senator MCCONNELL. I am curious—let us take the following independent expenditure. Assuming someone was running an ad saying, "Vote for Congresswoman 'X'; she voted to raise taxes to pay for new Government programs," would that be an ad for or against that candidate?

Mrs. SMITH. That would be against the other person.

Senator MCCONNELL. And the FEC would make that decision?

Mrs. SMITH. Oh—raise taxes—that would be against you. If the intent is to harm your election, and it is clear by the Act—

Senator MCCONNELL. Well, what if the group declared to the FEC that they thought that was a good idea, that they were commending Congress—

Mrs. SMITH. Well, the FEC would all have to be pretty dumb to accept that as a good idea.

Senator MCCONNELL. Really?

Mrs. SMITH. But I think you have made a point that we need to make sure that it is very clear in the language. The intent of the law was that if an ad were placed like the AFL-CIO is doing right now against a lot of the freshmen, in general or explicitly to harm them, that that would add to their spending limits. And if you would like to work on making that language even better, Senator McConnell, we would welcome that.

But we believe that the reporting of independent expenditures, which we tightened in the bill substantially, and the responsibility to have them be independent is very important, as well as allowing the person to respond. So we allow them to respond by raising the limit. And if there is anything where you think we do not meet the intent of the bill, we would be really happy to hear your recommendations.

Senator MCCONNELL. So, let us say you are 15 days out, and somebody comes into your district and says, "Vote for Congresswoman Smith; she voted to raise congressional pay because she thought it was important to have a full-time professional Congress." This group says, "We think that is a compliment to Congresswoman Smith." The FEC then tries to arbitrate that 15 days before the election, and then what happens after that?

Mrs. SMITH. First of all, we have a draft bill. We are discharging the bill, and we have a bipartisan coalition and probably more attorneys than are in this room to try to take a look at how we can tighten up the last month to make it even better.

So we are still looking at that, and if you are concerned about that, we could clarify the language.

Senator MCCONNELL. How would anybody be smart enough to reach a decision as to whether that was an expenditure for or against?

Mrs. SMITH. I have had two Supreme Court cases—one on campaign reform an awful lot like this, which we did win, by the way; and another one on spending limits. The law has reasonableness standards, and there is a common man or a reasonableness standard in a lot of the law. I do not think that that would be too hard to draft into this.

This is important, though, that we clarify that, and we are thankful for your recommendation there.

Mr. SHAYS. I think it is obvious, though, Senator, that the last week would become very difficult. Fifteen days before would be relatively easy to deal with; it is that last week. It may be that you simply cannot deal with the last week, that that may be a loophole in the bill that ends up not being fully addressed.

Senator MCCONNELL. Yes. In all likelihood, is it not the case, Chris, that you cannot regulate independent expenditures, in all likelihood?

Mr. SHAYS. The closer to the election, the more difficult.

Senator MCCONNELL. I mean, the courts are probably not going to let you tell groups of citizens or individual citizens they cannot go out and say whether they are for or against.

Mr. SHAYS. No, but our point is this. We want to make sure you do not have a candidate limited by what they can spend when they have independent groups going after them, and therefore, they trip over the limitation, still getting the advantage of the discount on radio, TV, and mail.

Senator MCCONNELL. I understand what you are trying to do, but don't you agree that it is pretty unlikely that any court is going to allow the Government—that is, us—to regulate independent expenditures.

Mr. SHAYS. Yes, but we do not do that.

Mrs. SMITH. They already do.

Mr. SHAYS. Yes, but our bill is not regulating what independents do; it is just telling the candidate that if an independent goes after you, the candidate is then not limited by the cap.

Senator MCCONNELL. Yes, but then you have the problem that I just raised of what is going after you, and who makes that decision.

Mr. SHAYS. Yes, and I say that I think that is less of a problem, candidly, than the other issue of when do they go after you. That is the point we are still wrestling with.

Senator MCCONNELL. Well, that is the problem with spending limits in general, as you all know. We see it in the Presidential race, which is the only Federal race with spending limits. It is sort of like putting a rock on Jello; everything goes out to the sides. And since so much of this other kind of speech cannot be constitutionally limited, it creates a kind of nightmare.

What you could end up with—Senator Ford mentioned the Kentucky race, and I will finish on this, Mr. Chairman—what we had in Kentucky was that the two campaigns ended up having

their speech limited, but the speech simply went elsewhere. There were record independent expenditures and soft money operations not by the parties, but by independent groups in Kentucky, which of course ended up also enhancing the power of the newspapers, which were all for the side you would expect them to be for. So you ended up with a totally unbalanced playing field, just the opposite of what the framers of the bill intended.

Let me close by saying that I think it is very, very difficult to quantify speech. In fact in the *Buckley* case, the court made it clear that it is constitutionally impermissible to try to dole out speech in equal amounts, and any time you try to micromanage that, particularly with Government regulations, it ends up being impossible.

Thank you, Mr. Chairman.

Mr. MEEHAN. If I could just make a comment on that, I do not think we can control the campaign expenditures now at the end of a campaign. We see from time to time examples where people are able to get hundreds of thousands of dollars in some cases from what turns out to be illegal sources in the last week or 10 days of a campaign. So there are certain imperfections in the system that we can never—

Senator MCCONNELL. Yes, right. But at least under the current system, Congressman, the campaign itself can defend itself, because it is not stuck with a cap. What happened in the Kentucky race was that the campaign that was under attack was stuck under the limit, and so it could not defend itself.

At least now, the campaign that may be under attack has a chance to respond; and therein lies the difficulty of trying to micromanage speech through Government control.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McConnell. Your contribution here clearly reflects really a career of studying this subject very carefully.

I have several questions to the panel, and Mrs. Smith, if you could lead off. How does your bill, with its provisions for reduced fee television, deal with cities that might have five or even fifteen congressional races?

Take the greater metropolitan Washington area, for example. I have run a rough calculation, and if you took into consideration that indeed the District of Columbia has representatives in the House, at least four in Virginia, and I can count probably four to five in Maryland, how would you deal with that and also, realistically, the volume of that amount of television being focused on the consumers?

Mrs. SMITH. First of all, the Senate bill gives a certain amount of free time, and we are trying to decide which is better—a certain amount of free, which would limit that, or 50 percent. And it might be a weakness in finding a way to select a certain

number. That is why we have left the bill open, and we are encouraging input.

Our goal is to allow people to have an ability to answer that challenger who is now, let us face it, locked out of being able to compete in that market because the incumbent normally has money to buy anything, or the wealthy person, and to be able to compete.

So our goal is to be able to do that and also have a compensation of the public airwaves to secure, under *Buckley v. Valeo*, the spending limits.

The CHAIRMAN. Mr. Shays?

Mr. SHAYS. First, in some markets, I would not be able to afford it even with the 50 percent discount. Senator, I could not afford New York air even if I had 50 percent.

So that in some of the markets, it is still not going to present a problem. I guess the question that you and we have to ask ourselves is are more people going to be able to advertise, and will this be additional business to the radio stations or not? In other words, in some markets, they do not have enough advertising, so it ends up being a marginal benefit; in some, where they are already packed, the issue is what space is available.

So it will be first come, first served as to who gets that space.

The CHAIRMAN. Mr. Meehan?

Mr. MEEHAN. The only thing that I would add is that we also put provisions in there that the discounts are available 60 days before the election. I cannot help but think the American people would be better served if we could find a way to have these advertisements reduced to 60 days before the election.

The CHAIRMAN. Are you concerned that the spending limits will only serve, perhaps, to enhance the influence of the media and exaggerate the importance of the spin on their events and policies?

Mrs. SMITH. You know, I have heard that, but my background and the reason I was a write-in candidate in 2 weeks is grassroots politics. We over-exaggerate that with the increase of talk radio and activism. I have a greater concern at the wealthy or the incumbent's ability to raise unlimited than I do reasonable spending limits.

The reason spending limits are as high as they are is that in the negotiations, I wanted them high enough for the challenger to compete in most markets, but not so high that the incumbent, who says, "We can raise the money; I can raise whatever level I need," is able to blow the challenger out of the water.

So the spending limits have to be relatively high. But remember, we are also coming in with something that is controversial to some, but I think is very reasonable, and that is, as a condition of the licensure, allowing some ability to get on the airwaves for that challenger, for that minority candidate and, often, for that woman, who cannot find enough money.

I can take my candidate, save the money until the end with discounted media and have a chance to take you out because you cannot blow me out of the water. As it is now, I cannot raise enough money to take one of you out; but under this bill, I can.

I think that that is probably the bottom line here. It is going to take a lot of integrity and character for anybody who is here to give away our advantage. And I can understand why we fight so hard to keep it, but we need to open up that door, break down that advantage, and let a few more challengers at us.

The CHAIRMAN. Mr. Shays?

Mr. SHAYS. Senator, I will respond to the question this way. We limit congressional races by \$600,000, but that is with discounted radio and TV, so the purchasing price is probably close to \$900,000. If your opponent does not stay within the limits, you are allowed under the cap to go to \$900,000 and, ultimately, to \$1.2 million, and you are able to buy it all at discounted rate. If you have independent expenditures against you, you are allowed to match them one-for-one, still using the discounted rate.

I think that that is quite an advantage for the person who agrees to the caps.

Senator MCCONNELL. Yes, and that is why it is unconstitutional, because you punish the candidate who chooses not to be constrained in his speech, and that is why the ACLU is opposed to the bill.

Mr. Chairman, I just thought I would interject that.

Senator FORD. Well, they do not always win in court.

Mr. SHAYS. No. It is fun when Republicans are complimentary to ACLU.

[Laughter.]

Mr. MEEHAN. Briefly, I think there is enough money there to compete with the other. The average congressional House elections were \$600,000 in the last election cycle. I think that is probably enough to get a message out.

The CHAIRMAN. I note that we have been joined by our distinguished colleague, the esteemed Senator from Rhode Island.

Do you wish to question the panel, Senator Pell?

Senator PELL. No, Mr. Chairman. I just want to get the flavor of the hearing and congratulate you on holding it. I will just listen in for a while. Thank you.

The CHAIRMAN. Thank you very much.

That will conclude this panel, and we thank you very much for the efforts you have put in heretofore and the efforts you have put forth today.

Senator FORD. With the staying power you have shown this morning, I believe we might get a bill.

The CHAIRMAN. We will now call Mr. David O'Steen, Ms. Becky Cain, and Mr. Charles Serio.

The chair has been advised that Mr. Serio has a time limitation.

Mr. SERIO. Yes, Senator.

The CHAIRMAN. Are there other members of this panel who have a time limitation—within reason?

[No response.]

The CHAIRMAN. Fine. Then, would you lead off, please, with your testimony, and we will place in the record in its entirety any written statement that you have.

TESTIMONY OF A PANEL CONSISTING OF CHARLES R. SERIO, LINTHICUM HEIGHTS, MARYLAND; DAVID N. O'STEEN, PH.D., EXECUTIVE DIRECTOR, NATIONAL RIGHT TO LIFE COMMITTEE, WASHINGTON, DC; AND BECKY CAIN, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, WASHINGTON, DC

Mr. SERIO. Thank you very much, Senator.

Good morning, Mr. Chairman and other committee members. I am pleased to be here this morning.

My name is Charles R. Serio, and I am a resident of Linthicum Heights, Maryland, in Anne Arundel County. For the past 30 years, I have been employed by Bell Atlantic, formerly Chesapeake and Potomac Telephone Company.

During those years, the Communications Workers of America, the CWA, has been the exclusive bargaining agent. I joined the CWA voluntarily in 1966, when C & P Telephone still had an open shop. The open shop ended in 1971 when CWA negotiated a union security agreement.

During the late 1970's, the differences between my public policy preferences and those of the union became a source of concern to me. This concern was heightened in 1982, when I learned of the Federal lawsuit brought by Harry Beck, a C & P employee from La Plata, Maryland, against the Communications Workers of America.

Harry Beck charged that the CWA was using his compulsory union dues for political and ideological activities. The court had found that CWA had used only 19 percent of the dues that it collected for legitimate collective bargaining purposes and ordered the remaining 81 percent returned to Harry Beck and the other plaintiffs.

My reaction was to confront the union leaders with this information and to ask that they put a stop to this practice. In response, the union took no action.

This experience indicated to me that for CWA, the priorities were the continuation of its own privileged status and the promotion of its political agenda. Bargaining for its members finished a distant third, as noted by the percentage of financial resources devoted to it.

CWA had presented me with a choice of remaining a full participant in the collective bargaining process or adhering to my principles. On Labor Day of 1986, I resigned from CWA and attempted to exercise my legal rights as defined by the *Beck* decision.

For more than 2 years, CWA failed to comply with my lawful demands for a reduced agency fee and, to this day, has not refunded the excessive amount collected from me in 1987. Even now, I am concerned that a major portion of my agency fee continues to be spent on nonbargaining activities, including support of public policy positions that I oppose.

These experiences have convinced me that my right to join and support a union is virtually worthless without the attendant right to refuse to join and support one. Workers must be free as individuals to choose which institutions and philosophies to support and which to reject.

The current system deprives workers of their fundamental freedoms of speech and association and insulates organized labor from the consequences that justifiably befall any other institution that is unresponsive to its constituents.

While the best antidote is to give all workers the right to work without joining a union, an alternative would be the establishment of a dues system that permits union to collect only those fees that are used for legitimate collective bargaining purposes, with full participation by all employees who pay such fees, and any additional so-called union activity should be solely funded on a voluntary basis.

I would hope the committee would consider the rights of workers while improving campaign finance laws.

Thank you for letting me speak to you today, and I will be happy to answer questions that the committee may have.

[The prepared statement of Mr. Serio follows:]

PREPARED STATEMENT OF CHARLES R. SERIO, LINTHICUM HEIGHTS, MD

My association with the Communications Workers of America (CWA) started during my first month with the Chesapeake & Potomac Telephone Company of Maryland (now Bell Atlantic-Maryland, Inc.) in 1966. I was drafted into the U.S. Army in May of that year, but rejoined CWA shortly after returning to C&P in 1968. My father was at that time a member of the United Steelworkers and had been a Teamster before that. I had been a Teamster myself a few years earlier. It was not necessary for anyone at C&P to sell me on union membership, even though it was an "open shop" at the time. I liked belonging to the union and having someone to represent me; I knew that I was no match for a big corporation.

As I got older, I became more concerned about public policy and politics in general. I noticed that organized labor and CWA usually took positions opposed to mine in those areas; again I was not greatly concerned. I believed that the resources committed by the union to such activities were insignificant.

Then in 1981 came an AFL-CIO (CWA is an affiliate) sponsored media event known as "Solidarity Day," a massive march on Washington to protest the policies of the Reagan administration. I was a supporter of Ronald Reagan and his policies. When I discovered that the unions had chartered 3,000 buses and a number of Amtrak trains to bring in the protesters and paid \$65,000 to rent the entire Washington subway system for the day, I was appalled. It was also re-

ported that some of the protesters were paid \$50 plus expenses to show up. At this point I began to question in my own mind whether union membership was all that I thought it was.

The next blow to my confidence in CWA was my discovery, through an ad in the December 1982 issue of *The American Spectator*, about the case of Harry Beck. Harry Beck had been a member of CWA and an employee of C&P Telephone when he lived in La Plata, Maryland. The ad, sponsored by the National Right to Work Legal Defense Foundation, an organization that I had previously not heard of, detailed Harry Beck's successful law suit against my union Harry, like me, was at odds with CWA on politics. The court had found that CWA was spending only 19 percent (an appeal later raised this amount to 21 percent) of its dues-derived income on collective bargaining and therefore ordered the rest refunded. (The court also ruled that it was unlawful for unions to collect from objecting nonmembers any amount in excess of the actual cost of the collective bargaining, contract administration, and grievance adjustment.) I was stunned by this figure. I could not believe that that much money was being diverted from what I had believed was CWA's primary function.

During 1983 and 1984, I observed that organized labor was very much involved in the process of determining who the Democrats would be running against the Reagan-Bush ticket in the coming election. It was obvious that significant resources were being devoted to this as well as to the general election. This observation prompted me to question CWA's activities. I wanted to determine for myself the extent of CWA's non-bargaining expenses.

In December of 1984, shortly after the re-election of Ronald Reagan, I wrote a letter to CWA Local 2100. In my letter I detailed my numerous disagreements with the union's political and legislative agenda. I also pointed out that exit polls indicated that 57 percent of blue collar workers (those citizens whose interests labor claims to represent) had voted for Ronald Reagan while labor's endorsement and money went to the Mondale-Ferraro ticket.

The letter prompted a phone call from the President of CWA Local 2100 a few days later. During the course of our conversation, the Local President said that he would have my letter published in the local's monthly newsletter. He also explained that political endorsements were based solely on the candidates positions on labor issues. In an effort to determine the size of the reduction that an objecting non-member could expect, I asked him how much of my union dues were used for non-bargaining expenses. The response to my question about the potential reduction came in the form of a letter dated January 14, 1985. He claimed that a small portion of the 29 cents per month that CWA pays to the AFL-CIO for each member might go for political "contributions" and therefore be non-chargeable. That puts the figure at no more than \$3.48 annually. This response was disingenuous since I had asked him how much money was used for non-bargaining expenses, and therefore non-chargeable under *Beck*, not how much was contributed to campaigns. On January 23, 1985, I followed up with another letter explicitly asking how much of my dues were used for activities unrelated to representation and therefore non-chargeable. This letter has never been answered.

For the rest of my time as a CWA member I would ask at union membership meetings, questions about union political activities and the amount of the related expenses. CWA Local 2100 even invited me to become a member of the local's legislative committee. I agreed to serve and was appointed to the committee by the local's executive board. I served as a member of the legislative committee from June 1985 until I was transferred to a new work location and hence to the jurisdiction of CWA Local 2101 in January of 1986. During the 6 months that I served, I received information from the union concerning its legislative agenda. The union provided me with documentation indicating that it was directly involved in lobbying on MX missile deployment, funding of public broadcasting, federal welfare spending, aid to El Salvador and virtually every element of the liberal agenda. Although I repeatedly requested a meeting with the rest of the CWA's legislative committee to discuss these issues, no meeting was convened during my tenure period. I concluded that it was a non-functioning committee and had no authority to address policy.

In November of 1985, the president of Local 2100 finally made good on his commitment to publish my December 1984 letter in which I questioned the CWA's policy of nearly always endorsing candidates with the most radical liberal views. With my letter was printed an editorial response of fifteen hundred words. In this response, I and anyone else who had the temerity to deviate from CWA's liberal orthodoxy were labeled as partisans of greed, prejudice, racism and ignorance that put me on notice that CWA had little tolerance of dissenting members.

Subsequently, I discovered that CWA was engaged in pro-abortion activities, a position that I could not support. I tried, unsuccessfully for several months to achieve a compromise.

I had no objection then and I have no objection now to CWA taking any position on any question of public policy. However, I do believe that I have a right to dissent. And with that right to dissent goes the right to refuse to finance the promotion of the policies that I find abhorrent. Since it is the policy of CWA to require all members to pay for the costs of its legislative, political, and ideological activities, the *Beck* ruling, applying to nonmembers, was my only option. That meant that after 18 years of membership, the Communication members of America was presenting me with the choice of being a full participant of collective bargaining or adhering to my philosophical and moral convictions. On September 1, 1986, Labor Day, I resigned from CWA.

Organized labor would have you believe that workers who object to the use of agency fees for nonrepresentational expenses need only register their objections with the union to have their agency fee reduced to only those costs specified by the U.S. Supreme Court in *CWA v. Beck*, that is, collective bargaining, contract administration and grievance adjustment. My experience was quite different, however. No matter how scrupulously I followed the prescribed policy, my demands for an agency fee reduction were ignored. Even though I resigned from the union on September 1, 1986, and even though that resignation was acknowledged in three separate letters, all in 1986, from national union leaders, the union did not comply with my demands. The union failed to recognize my *Beck* rights until after I submitted written testimony against CWA in *Abrams v. Communications Workers of America, AFL-CIO* in October of 1988. I subsequently received my first agency fee reduction in January of 1989—more than 2 years after my initial effort. I would also point out that to this day CWA has not refunded the illegal and excessive amount that was collected from me for 1987. It has now been more than 9 years.

For the last 11 years, I have been wrestling with the well financed leviathan of organized labor. For my efforts to have my rights respected, I have been labeled a greedy ignorant racist, compared unfavorably to Judas Iscariot, and told that while my values were unacceptable to the union, my financial support was mandatory. I have come to realize that the union is no more than a special interest group that happens to have a collective bargaining agreement with my employer. CWA continues to force me to fund its political and ideological activities with impunity. Although I am currently paying a reduced agency fee, the fee is reduced only by the amount (23 percent) that CWA is willing to admit is used for activities unrelated to legitimate representation. Effectively challenging the amount requires expensive and time consuming litigation that the average worker is unable to pursue.

These experiences have convinced me that my right to join and support a union is virtually worthless without the attendant right to refuse to join and support one. Workers must be free, as individuals, to choose which institutions and philosophies to support and which to reject. The current system deprives workers of their fundamental freedoms of speech and association and insulates organized labor from the consequences that justifiably befall any other institution that is unresponsive to its constituents. I believe that the ability of unions to compel workers to support them often proves to be an irresistible temptation for union leaders to pursue their own agenda rather than that of the represented employees.

While the best antidote is to give all workers the right to work without joining a union, an alternative would be the establishment of a dues system that permits unions to collect only those fees that are used for legitimate collective bargaining

purposes—with full participation by all employees who pay such fees. Any additional so-called “union activities” should be funded solely on a voluntary basis.

The CHAIRMAN. I would suggest that the panel now afford itself of such opportunity as they wish to ask Mr. Serio questions.

Senator McConnell, go right ahead.

Senator MCCONNELL. Thank you, Mr. Chairman.

I think your statement, Mr. Serio, noted that Harry Beck’s lawsuit revealed that only 19 to 21 percent of the union’s compulsory dues went to collective bargaining.

Mr. SERIO. In 1982, when I discovered the suit, when I became aware of it, the 19 percent figure was the figure; it later was raised to 21, and it was upheld by the Supreme Court.

Senator MCCONNELL. Was the other 80 percent, then, for political activities?

Mr. SERIO. Well, it was for activities that the Court found were not related to collective bargaining. Some of them may have been not political, but other things that were not directly related to representing the workers.

Senator MCCONNELL. The chairman’s hearing today is, broadly speaking, about citizen participation in the political process and how the McCain bill would impact that. I guess your experience has been forced participation; is that the case?

Mr. SERIO. Yes, and I do like to participate in the political process, but I would rather support candidates and positions that I would vote for, not for candidates—if my money goes to one candidate, and my vote goes to another, I think that that is counterproductive.

Senator MCCONNELL. Have you been ostracized or otherwise penalized for pursuing your constitutional freedom from forced participation?

Mr. SERIO. Yes.

Senator MCCONNELL. So that from your point of view, a bill protecting union members’ rights against forced participation would be reform?

Mr. SERIO. Well, if there is going to be reform, I would certainly like to see that included. I am being forced to participate on a side that I disagree with.

Senator MCCONNELL. In conclusion, Mr. Chairman, there is nothing in S. 1219 that would protect the rights of individual union members against this kind of forced participation, so I think Mr. Serio’s observation about his own personal experience certainly points out one of the shortcomings of the underlying bill.

Thank you.

The CHAIRMAN. Senator Ford?

Senator FORD. You have a long and detailed statement which I have received, and it has been a little hard for me to read it all, and I honestly scanned it. But in your statement, you say that

"The CWA continues to force me to fund its political and ideological activities with impunity."

Mr. SERIO. Yes, sir.

Senator FORD. You go on to point out that you pay a reduced agency fee, but you add, and I quote, "The fee is reduced only by the amount, now 23 percent, that CWA is willing to admit is used for activities unrelated to legitimate representation"; is that correct?

Mr. SERIO. Yes, sir, that is.

Senator FORD. I have some trouble with your statement, and we got into this before, and I think it is there now—CWA gives you an audited statement each year of those expenses that are collective bargaining-related and those that are not, along with a check for your share of the noncollective bargaining expenses. Is that correct?

Mr. SERIO. Yes, sir.

Senator FORD. You also state that "effectively challenging the amount of the agency fee requires expensive and time-consuming litigation that the average worker is unable to pursue." So you are not the average worker.

And it is my understanding that the National Right to Work Legal Defense Foundation, Incorporated has represented you in several cases that you have brought before the NLRB; is that correct?

Mr. SERIO. Yes, Senator, that is correct.

Senator FORD. One incident, I understand involved a dispute over 84 cents. The answer to that is "Yes."

Mr. SERIO. I do not recall that amount, sir.

Senator FORD. Did this organization assist you in any way with your statement today?

Mr. SERIO. This—no.

Senator FORD. This is purely your writing, and you wrote it all by yourself?

Mr. SERIO. Yes, sir.

Senator FORD. Thank you, Mr. Chairman. That is all I have.

The CHAIRMAN. Senator Pell?

Senator PELL. No questions, Mr. Chairman.

Senator MCCONNELL. Mr. Chairman, could I just say there would be nothing inappropriate about a witness having someone help him prepare testimony. I think that happens all day, every day, in hearings before the committee. So I would not like to leave the impression—and I do not know whether he had any help or not—but even if Mr. Serio had some help, there would be nothing inappropriate or un-American about that.

Senator FORD. Well, Mr. Chairman, I want to say to my friend that I was not saying that. I just wanted to know if he had some help and if that group helped him. That is all I needed to know, and it was a very simple question. It must have stung a little bit.

The CHAIRMAN. The record reflects the answer.

Mr. Serio, I understand from your testimony that you were required to actually resign from the union before your agency fee was reduced; is that correct?

Mr. SERIO. Yes, Senator, that is correct.

The CHAIRMAN. Do you know whether or not this is a prevailing requirement?

Mr. SERIO. Well, my experience with this is limited to the Communications Workers of America. I think it is, but my personal experience is limited to just this one union.

The CHAIRMAN. Well, limited to your personal experience, you say you think. Do you know of other individuals?

Mr. SERIO. I know of people who are attempting now to exercise their Beck rights and are encountering the same kind of resistance. It took 2 years before the Communications Workers would recognize my resignation.

The CHAIRMAN. Once you resign, are you permitted to participate in any of the collective bargaining activities of the union?

Mr. SERIO. You are not permitted to participate in any decisions. Now, if they order a strike, you can certainly strike if you wish, but you have no input into whether you will strike or what you will settle, what will be bargained for, and what will be accepted. You are locked out of those decisions.

The CHAIRMAN. Thank you for joining us today, Mr. Serio. Please feel free to leave at your convenience. I am not suggesting that anyone leave, but I understand you had a scheduling conflict.

Mr. SERIO. Yes. I have to be in Annapolis shortly.

The CHAIRMAN. You may go ahead and leave.

Next, Dr. O'Steen, we welcome you. And again, your full statement will be included in the record.

TESTIMONY OF DAVID N. O'STEEN, NATIONAL RIGHT TO LIFE COMMITTEE, WASHINGTON, DC

Mr. O'STEEN. Thank you, Senator.

I am David O'Steen, executive director of the National Right to Life Committee, and I am testifying on behalf of National Right to Life and the National Right to Life Political Action Committee, which is an internal, separate, segregated fund for National Right to Life. NRL PAC is registered with the Federal Elections Committee.

The CHAIRMAN. Let me interrupt because I want to repeat for the record very carefully. You are testifying on behalf of one or both of those organizations?

Mr. O'STEEN. Both.

The CHAIRMAN. For both of those organizations.

Mr. O'STEEN. Yes, sir. Both organizations—let me repeat again, NRL-PAC is an internal PAC, a separate, segregated fund,

but both organizations in their separate roles have an interest in this bill.

The CHAIRMAN. I make that point because some of our witnesses today are speaking in their own right, although they are members of organizations. I want to protect both the witness and the organizations. In this instance, you speak for both organizations.

Mr. O'STEEN. For both organizations, yes, sir.

National Right to Life is a social welfare organization that is intensely engaged in public policy and issue advocate on behalf of the lives of vulnerable members of the human family, including unborn children and medically disabled or dependent persons whose lives are threatened by abortion or euthanasia.

National Right to Life PAC works to help elect congressional candidates who share our pro-life views and to defeat those candidates who do not. The funds used by National Right to Life PAC to advocate the election or defeat of candidates are provided by the approximately 300,000 members. The average contribution to the PAC is about \$31.

I would like to thank Chairman Warner and the members of the committee for the opportunity to speak to you today on this very serious matter.

So-called campaign finance reform that destroys free speech and grievously injures both the right of association and the right to petition Government can hardly be considered reform. We are very concerned that a number of measures that have been proposed in the name of campaign finance reform would have these disastrous and unconstitutional consequences. We feel that current measures under consideration in Congress would largely prevent citizen involvement in the political process.

Since S. 1219 and H.R. 2566 each contain examples of the objectionable provisions of which I speak, and National Right to Life is already on record as opposing both of them, I will largely direct my comments to those bills.

The First Amendment to the Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Our forebears did not fight and die for the right to discuss crops and the weather, or the right to assemble in social clubs. Core political speech and the right of citizens to work in unison to advocate issues or advance shared political goals is at the heart of the First Amendment.

The pamphlets and speech of National Right to Life and the National Right to Life PAC, as well as those of our opponents in the marketplace of ideas, are as important to democracy and political freedom today as the tracts of Thomas Paine were more than 200 years ago.

H.R. 2566 and S. 1219 would ban political action committees and thereby almost entirely eliminate involvement in the political process by ordinary citizens who are not independently wealthy.

These proposals would permit only individuals, or political committees organized by candidates and political parties, to solicit contributions or make expenditures "for the purpose of influencing an election for Federal office." However, the media would continue to be able to conduct political advocacy, and organizations such as labor unions would continue to be able to send political communications to their membership.

Many political action committees, such as the NRL PAC exist because their members want to work together to elect candidates who share their views and beliefs. Under the current system, citizens are free to coordinate activities through PAC's in order to pool their resources, discuss issues, express their views on positions taken by candidates, and urge voters to support or oppose certain candidates. Such freedom is essential to the political process and our American system of democracy.

Under these bills, an individual would be able to make independent expenditures, but a group of individuals would be forbidden to organize, pool their resources, and coordinate their activities. This would leave the political process open to very wealthy individuals, but would prohibit the vast majority of citizens from effectively making their voices heard.

As I mentioned earlier, the average donation to NRL PAC is \$31. That would not buy much political speech for the individual member.

Eliminating the opportunity for citizens to work together in political action committees with others with whose views they agree would silence their voice and stifle their speech. Further, the right of political association would be unconstitutionally trampled. This is not the intent of the First Amendment.

Attempts such as this to regulate and restrict democracy can also have other unfortunate and unforeseen consequences that make the cure far worse than the supposed disease. For example, as stated previously, neither bill limits the political speech and advocacy of the news media; nor do they limit communication of an organization to its own membership.

Thus, if either of these two bills become law, only candidates, political parties, very wealthy individuals, the news media, and organizations with vast memberships could effectively participate in the process. This would result in an incredibly skewed landscape.

For example, a candidate running in a State or district where there were only a few major newspapers and network channels and where those media outlets vigorously opposed his or her positions or candidacy would be at a much greater disadvantage than they would be today. The counterbalancing speech of a

political action committee that agreed with that candidate's viewpoint would be forbidden.

I believe that most would agree that such a scenario would be decidedly disadvantageous to many pro-life candidates. However, ours is not the only viewpoint and issue that is contrary to the editorial policy of much of the media. We predict that a wide variety of candidates would unfairly find themselves in great difficulty if the political power of the media could not be legally countered by issue-oriented political action committees.

The situation would only be further aggravated by the spending limits contained in the bill, which would severely limit a candidate's ability to respond to the political speech of the media, which would face no spending limits. Please understand that I am not proposing that the speech of the media be curtailed, but rather that we all retain our right to speak.

As I mentioned previously, S. 1219 and H.R. 2566 do not seek to limit political communications of organizations with their own membership. When this omission is coupled with the curtailment of other political speech, the political playing field is again unfairly tilted.

Before giving this example, I will clarify. National Right to Life takes no position either on union shops or right to work laws.

However, in those States that have union shops—and I believe there are 29 of them—a sizeable portion of the work force must pay dues to a union in order to keep their jobs. In those States, political candidates favored by labor would have a tremendous advantage over other candidates, since labor would be left free to send political communications advocating the election or defeat of candidates to a large membership, while other citizens' groups would be banned from sending such political communications to this same work force.

Political action committees play a valuable role in the give-and-take of our democracy. They give many citizens an opportunity to meaningfully participate in the finest political system in the world. We believe that banning political action committees is an unconstitutional abridgement of free speech and of the right of free association, and it would greatly enhance the political power of some entities at the expense of the political expression of ordinary citizens.

The new definition of "express advocacy" is unconstitutional and represses the free speech of citizens. In apparent anticipation of the ban on political action committees being held unconstitutional, the bills seek to suppress political speech through a "clarification" of "independent expenditures" which includes a definition of "express advocacy" that is broad enough to sweep in constitutionally protected "issue advocacy."

The definition of "independent expenditure" contained in the bills states that it is an expenditure that contains "express

advocacy." However, "express advocacy" is extremely broadly defined as follows: "The term 'express advocacy' means when a communication is taken as a whole and with limited reference to external events, an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular party. The term 'expression of support for or opposition to' includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action."

The new definition goes far beyond what the United States Supreme Court said was permissible to regulate as electioneering in the case of *Buckley v. Valeo*. In *Buckley*, the Supreme Court held that in order to protect issue advocacy, which is protected by the First Amendment, Government may only regulate election activity where there are explicit words, such as "vote for", "support" or "defeat" advocating the election or defeat of a clearly identified candidate.

This bright line definition of "express advocacy" has been upheld in a number of subsequent Federal court decisions. Most recently, on February 13th of this year, in *Maine Right to Life Committee v. Federal Election Commission*, the U.S. District Court for the District of Maine struck down as unconstitutional a definition of "express advocacy" similar in concept to that contained in S. 1219 and H.R. 2566 which was contained in new FEC regulations.

The new definition of "express advocacy" contained in the bills is broad enough to sweep in protected issue advocacy such as voter guides which state the positions candidates have taken on issue, or give candidates' voting records.

Currently, citizens' groups that are not political action committees are free to engage in such discussion of issues as long as they do not expressly advocate the election or defeat of a candidate as defined in *Buckley*.

However, under the expanded definition of "express advocacy," citizens' groups other than PAC's would also be effectively prohibited from informing the public about candidates' positions on issues as well as voting records. Even criticizing a candidate for his or her stand on an issue near an election would be "express advocacy" under the new definition since it would be "an expression of opposition to a specific candidate." This would also apparently mean that citizens' groups other than PAC's would be effectively prohibited from criticizing, near an election, the votes of those Members of Congress who are seeking reelection.

Thus, if the ban on political action committees is allowed to stand, the new definition of "express advocacy" would serve to effectively prohibit issue advocacy, since citizens could form no entity that could engage in it.

However, even if the ban on political action committees does not survive constitutional challenge, engaging in such issue advocacy would still prove very difficult or impossible for PAC's. Under S. 1219 and H.R. 2566, any expenditure that is not an "independent expenditure" is considered a "contribution," and the new definition of "independent expenditure" is so narrowly drawn as to exclude any expenditure with which a candidate has cooperated in any way. Thus, if a voter guide were compiled based on information regarding a candidate's stand that was obtained from the candidate, the voter guide would become a contribution rather than an independent expenditure.

Since contributions are limited to \$1,000 under these bills provided a total ban on PAC's is unconstitutional, production and distribution of voter guides would thus be effectively eliminated.

In addition, the proposed definitions of "independent expenditure" and "express advocacy" combine to effectively chill a political action committee's First Amendment right to petition the Government, since a communication with a Member of Congress regarding an issue would seriously jeopardize the ability of the political action committee to conduct an independent expenditure regarding that issue.

The suppression of issue-oriented speech that would follow from the new definitions of "express advocacy" and "independent expenditure" would be exceedingly onerous and repressive.

Also, this curtailment of citizens' freedom of speech would not affect the major media, whose political power would again be vastly enhanced, since one balancing force currently in the public forum would be eliminated.

Finally, the attempt to balance spending limits with independent expenditures in H.R. 2566 is unworkable. H.R. 2566 sets voluntary spending limits candidates must agree to in order to obtain certain benefits. However, if an independent expenditure in excess of \$25,000 is conducted on behalf of one candidate, the opposing candidate who has agreed to spending limits gets his or her spending limit raised equal to the amount of the independent expenditure.

I would like to reiterate the excellent example given earlier by Senator Mitch McConnell. Suppose we have Candidate Smith and Candidate Jones, and suppose an ad were run that said "Vote for Candidate Jones; he wants to eliminate Social Security for the elderly and raise your taxes." The ad would be an independent expenditure on behalf of Candidate Jones. Some might believe that that would have the effect of getting voters to support Candidate Smith. However, if the ad is recorded as an independent expenditure for Jones, Smith gets to increase his or her spending limits.

It is very frightening to think that then the Federal Election Commission as an agency would be empowered to read the

minds of those who made the expenditure and make a decision as to who this was supposed to be for or against.

Further, independent expenditures are not necessarily helpful to a candidate, even if that is the intention of the political action committee. It depends on how the expenditure is conducted. It could be actually harmful. This bill would give an advantage to Candidate Jones even though the expenditure may have been harmful to Candidate Smith, and even if he wished it were not made in the first place.

Further, this provision would serve to unconstitutionally chill the free speech of a political action committee contemplating an independent expenditure since the committee would know that exercising its right to speak would serve to benefit the very candidate it wished to oppose by increasing that candidate's spending limits.

In 1994, the 8th Circuit Court of Appeals found a somewhat similar scheme involving Minnesota State candidates unconstitutional in *Day v. Holohan*.

Also, as explained above, H.R. 2566 expands the definition of "express advocacy" to include "issue advocacy." If a committee published a voter guide that explained where the candidates stood on various issues, this would be express advocacy under H.R. 2566. Since the guides do not tell the voter whom to vote for, how are the guides to be reported, and which candidates get to increase their spending limits?

Our country's open system of representative democracy is the envy of the world. It does not need to be "fixed" by limiting people's voices and suppressing the free and vigorous discussion of issues and candidates. There are many countries in the world where political speech is repressed, and most of us would not want to live in any of them. Let us not lead America along their path. Whatever its flaws, democracy is the best system the world has seen to date.

Free speech is essential to democracy. It is important not only for the press and wealthy individuals, but also for ordinary citizens. The only way many ordinary citizens can have any meaningful opportunity to exercise their right of free political speech in America today is if they are allowed to pool their funds in political action committees.

The status quo on speech by membership organizations and independent expenditures by political action committees works. Disclosure laws governing PAC's already provide detailed information on where the money comes from and how it is spent. The current process allows citizens to be involved in their Government. That is how it should be.

I urge you to oppose S. 1219 and H.R. 2566, or any similar measures that would infringe upon the First Amendment rights of citizens.

Thank you, and I would be happy to answer any questions the committee may have.

[The prepared statement of Mr. O'Steen follows:]

PREPARED STATEMENT OF DAVID N. O'STEEN, PH.D., EXECUTIVE DIRECTOR, NATIONAL RIGHT TO LIFE COMMITTEE, WASHINGTON, DC

I am David N. O'Steen, Executive Director of the National Right to Life Committee. I am testifying on behalf of the National Right to Life Committee (NRLC) and the National Right to Life Political Action Committee (NRL PAC), an internal separate segregated fund of the National Right to Life Committee. NRL PAC is registered with the Federal Election Committee.

NRLC is a social welfare organization that is intensely engaged in public policy and issue advocacy on behalf of the lives of vulnerable members of the human family, including unborn children and medically disabled or dependent persons whose lives are threatened by abortion or euthanasia.

NRL PAC works to help elect congressional candidates who share our pro-life views and to defeat those candidates who do not. The funds used by NRL PAC to advocate the election or defeat of candidates are provided by the approximately 300,000 members of NRLC. The average contribution to the PAC is about \$31.

I would like to thank Chairman Warner and members of the Committee for the opportunity to speak with you today on the very serious matter before you.

So-called campaign finance reform that destroys free speech and grievously injures both the right of association and the right to petition government can hardly be called "reform." We are very concerned that a number of measures that have been proposed in the name of campaign finance reform would have these disastrous and unconstitutional consequences. We feel that current measures under consideration in Congress would largely prevent citizen involvement in the political process.

Since S. 1219 and H.R. 2566 each contain examples of the objectionable provisions of which I speak and National Right to Life is already on record as opposing both of them, I will largely direct my comments to S. 1219 and H.R. 2566.

The First Amendment to the Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Our forebears did not fight and die for the right to discuss crops and the weather, or the right to assemble in social clubs. Core political speech and the right of citizens to work in unison to advocate issues or advance shared political goals is at the heart of the First Amendment. The pamphlets and speech of National Right to Life and National Right to Life PAC, as well as those of our opponents in the marketplace of ideas, are as important to democracy and political freedom today as the tracts of Thomas Paine were more than 200 years ago.

- I. H.R. 2566 and S. 1219 would ban political action committees and thereby almost entirely eliminate involvement in the political process by ordinary citizens who are not independently wealthy.

These proposals would permit only individuals, or political committees organized by candidates and political parties, to solicit contributions or make expenditures "for the purpose of influencing an election for Federal office." However, the media would continue to be able to conduct political advocacy and organizations such as labor unions would continue to be able to send political communications to their membership.

Many political action committees, such as the National Right to Life PAC, exist because their members want to work together to elect candidates who share their views and beliefs. Under the current system, citizens are free to coordinate activities through PAC's in order to pool their resources, discuss issues, express their views on positions taken by candidates, and urge voters to support or oppose certain candidates. Such freedom is essential to the political process and our American system of democracy.

Under these bills, an individual would be able to make independent expenditures, but a group of individuals would be forbidden to organize, pool their resources, and coordinate their activities. This would leave the political process open to very wealthy individuals, but would prohibit the vast majority of citizens from effectively making their voices heard.

As I mentioned earlier, the average donation to National Right to Life PAC is \$31, which would not provide much political speech for one of our individual members.

Eliminating the opportunity for citizens to work together in political action committees with others with whose views they agree, would silence their voices and stifle their speech. Further, their right of political association would be unconstitutionally trampled. This is not the intent of the First Amendment.

Attempts such as this to regulate and restrict democracy can also have other unfortunate and unforeseen consequences that make the cure far worse than the supposed disease. For example, as stated previously, neither H.R. 2566 nor S. 1219 limits the political speech and advocacy of the news media. Nor do they limit communications of an organization to its own membership.

Thus, if either of these two bills became law, only candidates, political parties, very wealthy individuals, the news media, and organizations with vast memberships could effectively participate in the political process. This would result in an incredibly skewed landscape.

For example, a candidate running in a state or district where there were only a few major newspapers and network channels, and where those media outlets vigorously opposed his or her positions or candidacy, would be at a much greater disadvantage than they would be today. The counter-balancing speech of a political action committee that agreed with that candidate's viewpoint would be forbidden. I believe most would agree that such a scenario would be decidedly disadvantageous to many pro-life candidates. However, ours is not the only viewpoint and issue that is contrary to the editorial policy of much of the media. We predict that a wide variety of candidates would unfairly find themselves in great difficulty if the political power of the media could not be legally countered by issue-oriented political action committees.

This situation would only be further aggravated by the spending limits contained in the bills which would severely limit a candidate's ability to respond to the political speech of the media, which would face no spending limits. Please understand that we are not proposing that the political speech of the media be curtailed, but rather that we all retain our right to speak.

As I mentioned previously, S. 1219 and H.R. 2566 do not seek to limit political communications of organizations with their own membership. When this omission is coupled with the curtailment of other political speech, the political playing field is again unfairly tilted.

Before giving this example, let me clarify that National Right to Life and National Right to Life PAC take no stand regarding either right to work laws or union shops.

However, in those states that have union shops (I believe there are 29 of them), a sizeable portion of the workforce must pay dues to a union in order to keep their jobs. In those states, political candidates favored by labor would have a tremendous advantage over other candidates, since labor would be left free to send political communications advocating the election or defeat of candidates to a large membership while other citizens' groups would be banned from sending such political communications to this same workforce.

Political action committees play a valuable role in the give and take of our democracy. They give many citizens an opportunity to meaningfully participate in the finest political system in the world. We believe banning political action committees is an unconstitutional abridgement of free speech and the right of free association, and it would greatly enhance the political power of some entities at the expense of the political expression of ordinary citizens.

II. The new definition of "express advocacy" is unconstitutional and represses the free speech of citizens.

In apparent anticipation of the ban on political action committees being held unconstitutional, the bills seek to suppress political speech through a "clarification" of "independent expenditures," which includes a definition of "express advocacy" that is broad enough to sweep in constitutionally protected "issue advocacy."

The definition of "independent expenditure" in S. 1219 and H.R. 2566 states that it is an expenditure that contains "express advocacy." "Express advocacy" is defined as follows:

18(A) The term "express advocacy" means, when a communication is taken as a whole and with limited reference to external events, an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular party.

(B) The term "expression of support for or opposition to" includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action.

The new definition goes far beyond what the United States Supreme Court said was permissible to regulate as electioneering in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, the Supreme Court held that, in order to protect issue advocacy—which is protected by the First Amendment—government may only regulate election activity where there are *explicit* words, such as "vote for," "support," or "defeat," advocating the election or defeat of a clearly identified candidate.

This "bright line" definition of express advocacy has been upheld in a number of subsequent federal court decisions. Most recently, on February 13, 1996, in *Maine Right to Life Committee, Inc. vs. Federal Election Commission*, the U.S. District Court for the District of Maine struck down as unconstitutional a definition of express advocacy similar in concept to that contained in S. 1219 and H.R. 2566 which was contained in new FEC regulations.

The new definition of express advocacy contained in the bills is broad enough to sweep in protected issue advocacy such as voter guides which state the positions candidates have taken on issues or give candidates' voting records.

Currently, citizens' groups that are not political action committees are free to engage in such discussion of issues as long as they do not expressly advocate the election or defeat of a candidate, as defined in *Buckley*. However, under the expanded definition of express advocacy, citizens' groups other than PAC's would also be effectively prohibited from informing the public about candidates' positions on issues as well as voting records. Even criticizing a candidate for his or her stand on an issue near an election would be "express advocacy" under the new definition since it would be "an expression of . . . opposition to a specific candidate." This would also apparently mean that citizens' groups other than PAC's would be effectively prohibited from criticizing, near an election, the votes of those members of Congress who are seeking re-election.

Thus if the ban on political action committees is allowed to stand, the new definition of express advocacy would serve to effectively prohibit such issue advocacy since citizens could form no entity that could engage in it. However, even if the ban on political action committees does not survive constitutional challenge, engaging in such issue advocacy would still prove very difficult or impossible for PAC's. Under S. 1219 and H.R. 2566, any expenditure that is not an "independent expenditure" is considered a "contribution," and the new definition of "independent expenditure" is so narrowly drawn as to exclude any expenditure with which a candidate has cooperated in any way. Thus if a voter guide was compiled based upon information regarding a candidate's stand that was obtained from the candidate, the voter guide would become a contribution rather than an independent expenditure.

Since contributions are limited to \$1,000 under these bills, provided a total ban on PAC's is unconstitutional, production and distribution of voter guides would thus be effectively eliminated.

In addition, the proposed definitions of independent expenditure and express advocacy combine to effectively chill a political action committee's first amendment right to petition the government since a communication with a member of

Congress regarding an issue would seriously jeopardize the ability of the political action committee to conduct an independent expenditure regarding that issue.

The suppression of issue-oriented speech that would follow from the new definitions of "express advocacy" and "independent expenditure" would be exceedingly onerous and repressive.

Also, this curtailment of citizens' freedom of speech would not affect the major media whose political power would again be vastly enhanced, since one balancing force currently in the public forum would be eliminated.

III. The attempt to balance spending limits with independent expenditures in H.R. 2566 is unworkable.

H.R. 2566 sets voluntary spending limits candidates must agree to in order to obtain certain benefits. However, if an independent expenditure in excess of \$25,000 is conducted on behalf of one candidate, the opposing candidate who has agreed to spending limits gets his/her spending limit raised equal to the amount of the independent expenditure.

In order to be less confusing, for purposes of the following review I will use Candidate Smith and Candidate Jones. If both candidates have agreed to accept the spending limits and an independent expenditure is conducted on behalf of Candidate Smith, the opponent, Candidate Jones, would get to increase his or her spending limits. However, not all independent expenditures made on behalf of a candidate are necessarily helpful to that candidate, and depending on how the expenditure is conducted, could actually be harmful. This bill would give an advantage to Candidate Jones, even though the expenditure may not have been helpful to Candidate Smith.

Further, this provision would serve to unconstitutionally chill the free speech of a political action committee contemplating an independent expenditure since the committee would know that exercising its right to speak would serve to benefit the very candidate it opposed by increasing that candidate's spending limit.

(In 1994, the Eighth Circuit Court of Appeals found a somewhat similar scheme involving Minnesota state candidates unconstitutional in *Day vs. Holohan*.)

Other scenarios show the unworkable nature of this provision. For example, what if some committee tries to help Candidate Smith by ostensibly supporting Candidate Jones. Their ad might say, "Vote for Candidate Jones. He wants to eliminate social security for the elderly and raise your taxes." The ad would be an independent expenditure on behalf of Candidate Jones, while having the effect of getting voters to support Candidate Smith. However, since the ad would be reported as an independent expenditure for Candidate Jones, Candidate Smith would get to increase his or her spending limit.

Also, as explained above, H.R. 2566 expands the definition of "express advocacy" to include "issue advocacy." If a committee published a voter guide that explained where the candidates stood on various issues, this would be express advocacy under H.R. 2566. Since the guides do not tell the voter who to vote for, how are the guides to be reported and which candidates get to increase their spending limit?

Our country's open system of representative democracy is the envy of the world. It doesn't need to be "fixed" by limiting people's voices and suppressing the free and vigorous discussion of issues and candidates. There are many countries in the world where political speech is repressed and most of us would not want to live in any of them. Let's not lead America along their path.

Whatever its flaws, democracy is the best system the world has seen to date.

Free speech is essential to democracy. It is important not only for the press and wealthy individuals, but also for ordinary citizens. The only way many ordinary citizens can have any meaningful opportunity to exercise their right of free political speech in modern America is if they are allowed to pool their funds in political action committees.

The status quo on speech by membership organizations and independent expenditures by political action committees works. Disclosure laws governing PAC's already provide detailed information on where the money comes from and

how it is spent. The current process allows citizens to be involved in their government. That is how it should be.

I urge you to oppose S. 1219 and H.R. 2566 or any similar measures that would infringe upon the first amendment rights of citizens.

The CHAIRMAN. We thank you, Dr. O'Steen. That was a very erudite and well-prepared statement. I assure you this Senator has a compass needle right on that First Amendment, and I want to make certain, to the extent I can direct the actions of this committee, that we do nothing to limit that First Amendment.

I think this is an appropriate time just to recite one passage out of *Buckley v. Valeo*, and I will quote it: "The concept that Government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."

The CHAIRMAN. Ms. Cain?

TESTIMONY OF BECKY CAIN, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE U.S., WASHINGTON, DC

Ms. CAIN. Mr. Chairman, members of the committee, I am Becky Cain, president of the League of Women Voters of the United States.

For over 75 years, Leagues across the country have worked to educate the electorate, register voters, and make government at all levels more accessible and responsive to the average citizen.

The CHAIRMAN. Ms. Cain, I want to make sure the record reflects you are speaking on behalf of that organization.

Ms. CAIN. Yes, sir, I am.

Senator FORD. And a good one, too.

The CHAIRMAN. Other witnesses today are speaking individually, even though they have an affiliation with a national organization, and I just want to make sure you are speaking on behalf of your organization.

Ms. CAIN. Yes, Senator.

The CHAIRMAN. Thank you.

Ms. CAIN. Thank you.

I appreciate the opportunity to be here today to express the League's deep concerns about the campaign finance system. We believe the current system does not serve the American voter, nor does it advance the American political system in general.

The current campaign finance system undermines public confidence, and it is unfair. People are concerned, frustrated and disgusted with how the system works.

We are pleased that Congress has chosen to tackle this all-important issue, and we urge that you move quickly to pass comprehensive campaign finance reform this year.

Today we are happy to follow a panel of Members of the House of Representatives, including Representatives Smith, Shays and Meehan. We in the League support their efforts and are pleased to endorse their legislation, H.R. 2566.

The 1994 congressional election was the most expensive in history. The average cost of winning a seat in the United States House of Representatives was \$530,000. For a seat in this body, the United States Senate, the average cost of a winning campaign was \$4.3 million.

The sheer expense of successfully running for congressional office is itself a deterrent to participatory democracy, to would-be candidates who lack the basic resources to run, and to citizens who would then support them.

The high level of campaign spending also hurts the competitive balance between incumbents and challengers. In addition, campaigns too often spend too much of that money on negative campaigning which is helping to turn American citizens against politics. And the public knows that special interests too often influence the legislative process because they dominate in paying for congressional elections.

We believe that comprehensive reform of campaign financing will go a long way toward restoring voter confidence in American elections and our national leaders.

Mr. Chairman, Congress must act to restore public confidence in our political system.

In addition, Mr. Chairman, we believe that campaign finance reform will make Congress more representative by giving women challengers a better and a fairer chance to win. The trouble is not that women are not able to raise money—we are. In the 1994 elections, the women who ran in open seat, contested general elections in the House of Representatives raised a total of \$8.5 million. Their male opponents raised just under \$9 million, nearly the same amount.

Women have proven themselves to be able fundraisers. The problem is that the current campaign finance laws place challengers at a disadvantage. On average, the 52 female challengers in the 1994 election were outspent by incumbents by a ratio of three-to-one. The incumbents in these races received almost seven times as much money in contributions from political action committees as the challengers.

Unless this playing field between incumbents and challengers is leveled, the male-to-female ratio is unlikely to alter significantly. The answer is clear: campaign finance reform.

The League of Women Voters believes that the essential goals of campaign finance reform should be to provide for fair competition, cut special interest influence, and bring voters back as the central focus of campaigns, elections and government.

We believe that these problems can be addressed by legislation containing four key elements of reform: (1) new strict limits on special interest contributions; (2) voluntary spending limits; (3) reduced-cost ways for candidates to communicate in more responsible ways with the public; and (4) new controls on soft money.

Political action committees, or PAC's, are a major way that special interests give to congressional candidates. The League of Women Voters strongly supports an aggregate limit on total PAC contributions a candidate may receive. This will reduce the dependence of candidates on PAC's and the overall influence of special interests in the legislative process, and cut incumbents' ability to dominate a challenger with PAC money.

The League is equally concerned about the impact of large individual contributions. Large contributions from individuals are another way that special interests give to congressional candidates. This is particularly true in the Senate, where PAC giving is not dominant. In 1994, more than half of all individual contributions were for \$500 or more. Sometimes, when a candidate makes a show of giving up PAC contributions, it is discovered that special interest giving has simply reconstituted itself into large contributions from individuals.

The Center for Responsive Politics has looked at the pattern of individual giving. Its analysis of individual contributions over \$200 in the 1990 and 1992 elections found that "most came from two main sources: (a) the economic elite of the candidate's home state or district, and (b) executives from the same industries and interest groups that supply PAC dollars. Most House Members' large individual contributions came from within their own districts. Senators tend to get a much larger share from out-of-state."

The Center also found that the biggest contributors through large individual contributions were lawyers and lobbyists, with the finance, insurance, and real estate sector ranked second.

The League strongly supports an aggregate limit on the total amount a candidate may receive in large contributions from individuals. As overall PAC giving is limited, it is particularly important to deal with large individual contributions because there will be a tendency for PAC giving to try to reconstitute itself as individual contributions.

The League of Women Voters strongly supports voluntary spending limits. The limits should be low enough to limit excessive spending and high enough to allow candidates to communicate effectively with voters.

We believe that spending limits are a key part of campaign finance reform. They assure more equitable competition by preventing one candidate from having an excessive advantage over another in campaign spending, and they put a cap on a candidate's dependence on special interest contributions.

The League of Women Voters strongly supports radio, television and postal discounts for candidates who volunteer to observe spending limits. Instead of direct public financing, proposed legislation provides communication discounts—radio, television and postal discounts—to candidates who volunteer to abide by spending limits.

These discounts are important for three reasons. First, providing low-cost communication helps to ensure that political competition is more equitable. Each candidate has a base level of campaign resources that allows her or him to get out the campaign's message. Second, the communication discounts displace special interest contributions, freeing candidates somewhat from reliance on this source of funds. And third, the discounts do help induce candidates to volunteer for spending limits.

Mr. Chairman, we believe it is vitally important for Congress to act on campaign finance reform. We strongly support H.R. 2566, the legislation that has been introduced in the House of Representatives by Representatives Shays, Meehan and Smith. We also commend Senators McCain and Feingold for addressing the need for campaign finance reform. We believe that their bill, S. 1219, with the inclusion of a provision to set an aggregate limit on the total amount a candidate may receive in large contributions from individuals, would effectively reform the political process. This provision is especially important here in the Senate, where large contributions from individuals make up a much greater proportion of campaign contributions than PAC's do.

The League of Women Voters believes it is time to respond to the needs of the public. By cutting special interest influence, by providing for fair competition, we can bring voters back as the central focus of campaigns, elections and government.

We urge you to move with the utmost speed to ensure that comprehensive campaign finance reform becomes law this year.

Thank you.

[The prepared statement of Ms. Cain follows:]

PREPARED STATEMENT OF BECKY CAIN, PRESIDENT, LEAGUE OF WOMEN
VOTERS OF THE UNITED STATES, WASHINGTON, DC

Mr. Chairman, members of the committee, I am Becky Cain, president of the League of Women Voters of the United States. I appreciate the opportunity to be here today to express the League's deep concerns about the campaign finance system. We believe the current system does not serve the American voter nor does it advance the American political system. The current campaign finance system undermines public confidence and it is unfair. People are concerned, frustrated and disgusted with how the system works.

The League of Women Voters of the United States is a non-partisan citizen organization with 150,000 members and supporters in all fifty states, the District of Columbia and the Virgin Islands. For over 75 years, Leagues across the country have worked to educate the electorate, register voters, and make government at all levels more accessible and responsive to the average citizen.

We are pleased that Congress has chosen to tackle this all-important issue and we urge that you move quickly to pass comprehensive campaign finance reform this year. Today we are happy to follow a panel of members of the House of Representatives including Representatives Linda Smith, Chris Shays and Marty Meehan. We in the League support their efforts and are pleased to endorse their legislation, H.R. 2566.

The 1994 congressional election was the most expensive in history. Candidates for the House and Senate raised a total of \$741 million and spent \$724 million in

their campaigns. The average cost of winning a seat in the U.S. House of Representatives was \$530,000. For a seat in the U.S. Senate, the average cost of a winning campaign was \$4.3 million. House incumbents spent an average of \$541,000 seeking reelection, while House challengers only spent an average of \$111,000. Senate incumbents spent an average of \$4.4 million seeking reelection, while Senate challengers only spent an average of \$976,000.

The sheer expense of successfully running for congressional office is itself a deterrent to participatory democracy, to would-be candidates who lack the basic resources to run and to citizens who would support them. Candidates feel immense pressure to raise big dollars or lose.

The high level of campaign spending also hurts the competitive balance between incumbents and challengers. In addition, campaigns too often spend too much on the negative campaigning that is helping turn America's citizens against politics. And the public knows that special interests too often influence the legislative process because special interests dominate in paying for congressional elections.

We believe that comprehensive reform of campaign financing will go a long way toward restoring voter confidence in American elections and our national leaders. Mr. Chairman, Congress must act to restore public confidence in our political system.

The League of Women Voters believes that the essential goals of campaign finance reform should be to cut special interest influence, provide for fair competition, and bring voters back as the central focus of campaigns, elections and government.

At a recent focus group in Dallas held by the League of Women Voters Education Fund and The Harwood Group, participants voiced their concerns over the role money plays in campaigns. They believe, for example, that money acts as a barrier to running for office. "I think there's a lot of good people out there and they can't run because they can't raise the money or they don't have the money," said one woman.

Others voiced concern that having to raise so much money distracts from the real business of government. "[Politicians] have to do so much to get elected, they have to make so many promises, make so many 'friends,'" observed another participant. "As soon as they get in office they'll start the whole cycle over again. They're barely in office and they're working to be reelected instead of . . . doing the right thing. They're worried about . . . how they're going to keep the money coming in," she said.

The critical issue for these citizens, however, was the influence of contributors on the candidates once they are in office. As one woman succinctly put it: "We're supposed to be ruled by a majority of the people, not by the people who have the most money to buy the votes and to buy favors." In other words, according to one man, "the people that are donating are going to have to get something back or they're not going to donate to you. You're going to do something for them."

The League of Women Voters believes that these problems can be addressed by legislation containing four key elements of reform: new, strict limits on special interest contributions; voluntary spending limits; reduced-cost ways for candidates to communicate in more responsible ways with the public; and new controls on "soft money" contributions.

LIMITS ON SPECIAL INTEREST CONTRIBUTIONS

Political Action Committee (PAC) contributions are a major way that special interests give to congressional candidates. Not only do these contributions affect the legislative process, they also undermine fair competition because they go predominantly to incumbents.

In Senate races in 1994, 56 percent of PAC contributions went to incumbents. In House races, 76 percent of PAC money went to incumbents. Looked at from another angle, Senate incumbents received 23 percent of their campaign money from PAC's, compared to 5 percent of Senate challengers. House incumbents received 45 percent of their campaign money from PAC contributions, compared to 15 percent for House challengers.

The League of Women Voters strongly supports an aggregate limit on total PAC contributions a candidate may receive. This will reduce the dependence of candidates on PAC's, and the overall influence of PAC's in the legislative process, and cut an incumbent's ability to dominate a challenger with PAC money. Legislation introduced by Senators McCain and Feingold, S. 1219, would set a 20 percent aggregate limit on PAC contributions, as a back-up to a ban on all PAC contributions. H.R. 2566, the Smith-Shays-Meehan bill in the House, has a 25 percent aggregate limit as a back-up. We can support either of these levels for limiting PAC giving.

Some have argued that PAC contributions should be banned. Most experts agree that a PAC ban would be unconstitutional because it violates the free speech and associational rights of citizens. In addition, a ban would be likely to force special interest money to reconstitute itself as large individual contributions or independent expenditures. We think an aggregate limit is the best way to go, and support the provisions of S. 1219 and H.R. 2566 that call for an early test of the constitutionality of the proposed PAC ban.

The League is equally concerned about the impact of large individual contributions. Large contributions from individuals are another way that special interests give to congressional candidates. This is particularly true in the Senate, where PAC giving is not dominant. In 1994, more than half of all individual contributions were for \$500 or more. Sometimes, when a candidate makes a show of giving up PAC contributions, it is discovered that the special interest giving has simply reconstituted itself into large contributions from individuals.

The Center for Responsive Politics has looked at the pattern of individual giving. Their analysis of individual contributions over \$200 in the 1990 and 1992 elections found that:

[M]ost come from two main sources: a) the economic elite of the candidate's home state or district, and b) executives from the same industries and interest groups that supply PAC dollars. (These tend to be based on the candidate's committee assignments in Congress.) . . . Most House members' large individual contributions come from within their own districts. Senators tend to get a much larger share from out of state.

The Center also found that the biggest contributors through large individual contributions were lawyers and lobbyists, with the Finance, Insurance and Real Estate sector ranked second.

The League strongly supports an aggregate limit on the total amount a candidate may receive in large contributions from individuals. H.R. 2566 sets an aggregate limit of 25 percent for contributions in excess of \$250. We believe that this provides balance with the 25 percent aggregate PAC limit in H.R. 2566. As overall PAC giving is limited, it is particularly important to deal with large individual contributions because there will be a tendency for PAC giving to try to reconstitute itself as individual contributions.

The League of Women Voters also believes that campaign finance legislation must end the practice of "bundling." Currently, one way for a lobbyist or fundraiser to get around the contribution limits on individuals and PAC's is to "bundle" contributions. The contributions, which come from a number of individuals, are made payable to the candidate and then delivered by the fundraiser, known as a "conduit." The League supports a ban on bundling by counting all such contributions against the limit for the conduit. This will prevent special interest contributions from being given outside the limits.

SPENDING LIMITS

The League of Women Voters strongly supports voluntary spending limits. The limits should be low enough to limit excessive spending and high enough to allow candidates to communicate effectively with voters.

We believe that spending limits are a key part of campaign finance reform because they assure more equitable competition by preventing one candidate from having an excessive advantage over another in campaign spending and because they put a cap on a candidate's dependence on special interest contributions. The League supports the voluntary spending limits included in S. 1219 and H.R. 2566.

RADIO, TELEVISION AND POSTAL DISCOUNTS

The League of Women Voters strongly supports radio, television and postal discounts for candidates who volunteer to observe spending limits.

Instead of direct public financing, legislation like H.R. 2566 and S. 1219 provides communication discounts—radio, television and postal discounts—to candidates who volunteer to abide by spending limits. These discounts are important for three reasons. First, providing low-cost communication helps ensure that political competition is more equitable. Each candidate has a base level of campaign resources that allows her or him to get out the campaign's message. Second, the communication discounts displace special interest contributions, freeing candidates somewhat from reliance on this source of funds. And third, the discounts do help induce candidates to volunteer for spending limits.

We think it is appropriate that those who are licensed to use the airways without charge be required to provide discounted radio and television time, or even free time, to candidates. In exchange for the use of the airways, broadcasters can repay our democracy by making the campaign system operate more fairly and more effectively. Savings from cutting the frank for incumbents can go toward providing the postal subsidies for participating candidates. The League supports the provision in S. 1219 and H.R. 2566 in this area.

"SOFT MONEY" CONTRIBUTIONS

Contributors and candidates now get around the provisions of campaign finance law through "soft money" contributions. These contributions are not subject to the Federal Election Campaign Act Funds because they are not for the election of a specific federal candidate. This is a particular problem in the presidential system, but it is also significant for congressional races.

The League supports a ban on the use of party soft money in federal elections. The law should require that all contributions that benefit federal candidates be counted as contributions to the candidates. We support the provisions of S. 1219 and H.R. 2566 on "soft money."

IN-STATE OR IN-DISTRICT REQUIREMENTS

Some have suggested that candidates should be required to raise all or part of their funding from within their states or districts. We believe the case has not been made for this proposal. Nevertheless, the League of Women Voters, while not supporting such a provision, recognizes that such requirements are not onerous as long as they are not prohibitive. We find these provisions in S. 1219 and H.R. 2566 not to be excessively strict, though there are those who raise constitutional questions about such limitations.

Mr. Chairman, we believe it is vitally important for Congress to act on campaign finance reform. We strongly support H.R. 2566, the legislation introduced in the House by Representatives Smith, Shays and Meehan. We also commend Senators McCain and Feingold for addressing the need for campaign finance reform. We believe that their bill, S. 1219, with the inclusion of a provision to set an aggregate limit on the total amount a candidate may receive in large contributions from individuals, would effectively reform the political process. This provision is especially important in the Senate, where large contributions from individuals make up a much greater portion of campaign contributions than PAC's do.

Mr. Chairman, we believe it is time to respond to the needs of the public. By cutting special interest influence, by providing for fair competition, we can bring voters back as the central focus of campaigns, elections and government. We urge you to move with the utmost speed to ensure that comprehensive campaign finance reform becomes law this year.

The CHAIRMAN. Ms. Cain, in looking over your testimony at page 5, you say, "We find these provisions in S. 1219 and H.R. 2566 not to be excessively strict, though there are those who raise constitutional questions about such limitations."

Could you for the record ask someone to assist you on an analysis of the constitutionality of the proposals you have given us today? Would you be willing to do that?

Ms. CAIN. Yes, sir.

The CHAIRMAN. We would appreciate that very much, because—and I will state this for future hearings and future witnesses—we must have each witness address the constitutional issues.

You raised also negative campaigning, which is a subject very much in the minds of American voters today, primarily as a consequence of the Republican Presidential campaign in the past—and I am hopeful that in the future, we will not have it. But it is like that famous Supreme Court statement, "I know it when I see it, but I do not know how to define it." That was not in reference to campaigning, it was another subject, but it applies to this one.

Do you have a definition in mind of what is "negative campaigning"?

Ms. CAIN. There actually have been studies done, and we can provide you with those. The term is often used to include all types of campaigning. Everyone disagrees with the use of misleading or wrong statements; no one supports that. There is a different category that is used to refer to negative campaigning. Putting the statement in a negative twist, like "Do not vote for Senator Warner because . . .", that has a very negative impact on the public. There have been studies, and we would be happy to bring them to you and show you, yes, Senator.

The CHAIRMAN. Let me conclude. Your organization sponsored debates I have had during the course of my election campaigns, and I want to express my appreciation to that organization for conducting those debates; they were done very fairly and gave the public what I thought was an opportunity to assess both, and I emerged victorious in each instance, so I thank you very much.

Ms. CAIN. Well, thank you, sir. It was our pleasure.

The CHAIRMAN. Senator Ford?

Senator FORD. One more time.

Ms. Cain, how much do you think the discount broadcast time and reduced postal rates will induce candidates to agree to voluntary limits?

Ms. CAIN. Well, sir, there have been studies done that indicate that communications is a very large proportion of what money goes for now during a campaign. By reducing the expenditure that a candidate would have to make in that regard, or offering free time, it would definitely be an enticement. Communication seems to be one of the largest expenditures now when you campaign. So we think it will be a big inducement.

Senator FORD. Do you have any other suggestions to improve the ability to secure additional candidates, or candidates who are worthy candidates but are just afraid of the money chase?

Ms. CAIN. Well, one of the things that we have to do is—yes—are you asking are there other alternatives?

Senator FORD. Are there other ways that we could add or use to create incentives for candidates to announce and run for office?

Ms. CAIN. Aside from forming campaign—

Senator FORD. Yes, other than the voluntary reduction in broadcast time and postal rates; is there anything else we could do other than limit the amount of money and have everybody be on a level playing field?

Ms. CAIN. There are many things, not specifically related to campaign finance reform, however.

Senator FORD. What do you think about the Speaker of the House suggestion during the House Oversight Committee hearing that individual PAC limits be reversed so that the PAC limit would be \$1,000, and the individual limit would be \$5,000?

Ms. CAIN. Well, we do realize that PAC's represent a conglomerate, or more than one individual, so we do not have as much concern about their limit being higher, because they do reflect more individuals. So we think it appropriate that the PAC limit is higher than the individual limit.

Senator FORD. Dr. O'Steen, in your statement, you discuss the impact of a PAC ban. How would a reduced contribution limit for PAC's, let us say to the \$1,000 limit, affect the operation and effectiveness of your PAC?

Mr. O'STEEN. It may well be detrimental, but because \$1,000 today does not buy much speech, and the \$5,000 limit has been in effect for about 20 years, I think it is important, with all the talk about PAC's and special interests, to remember what we represent. We represent people who voluntarily make contributions to assemble together to speak on political issues.

My average donor of \$31 cannot get much speech today for \$31, but he can when National Right to Life pools those resources, the National Right to Life PAC.

Senator FORD. But if 32 of them were to make a \$1,000 contribution—or, 32-plus.

Mr. O'STEEN. The \$1,000 limit, to reduce it to that amount will reduce our ability to speak as far as our contribution. But we are less concerned with that—and I think this is the main point I want to make—if there is a reduction in the limit of the contribution, then there has to be, I believe, a real tightening of the definition of "coordination" so that we are absolutely free to make true independent expenditures.

These bills go the other way, and they broaden this so that even what today would be an independent expenditure would be swept in as a contribution. It is a farce to say that you can make an independent expenditure and then define things so that practically anything you do falls under the contribution limit, and then, if it falls under the contribution limit, \$1,000 effectively prohibits you from speaking.

What does it cost to run one full-page newspaper ad? Well, in Minneapolis or St. Paul, it is about \$10,000. So that right now, if we wanted to make a contribution of one full-page newspaper ad, just one, and it was done in coordination with a candidate, we could not do it in either of the two major Minnesota newspapers, not to mention—and I picked an average Midwestern State—not to mention in *The Washington Post*.

So I think it is important that you do not sweep in independent expenditures into contributions, and these two bills really do that.

Senator FORD. Well, of course, I was asking about PAC's, and you expanded quite a bit on me.

In addition to making contributions, does your PAC get involved in political education activities to encourage its members to participate in the political process, and if you do, would you describe those activities for the committee?

Mr. O'STEEN. Yes, sir. Our political action committee encourages our membership and the citizens at-large to vote in favor of pro-life candidates, to oppose candidates who are not pro-life; we print literature; we at time purchase advertising—very little television—some radio. We sometimes will encourage the citizenry at-large just to vote, without expressly advocating for or against a specific candidate. Sometimes, our PAC does a "get out the vote" where we expressly advocate voting for a candidate. All of the usual things that you do in a free political system, we do.

Senator FORD. What percentage of the funds of the PAC would be used for that type of—I am just trying to get some idea—you are more of a—

Mr. O'STEEN. The vast majority—I can come back to the committee with a specific percentage, but I can easily tell you well over half, and I believe well over three-quarters, of our funds are spent in either independent expenditures, a very small amount in so-called in-kind contributions—

Senator FORD. But "independent expenditure" is for a candidate or against a candidate.

Mr. O'STEEN. Right.

Senator FORD. But I am talking about your expenditure for education, "Get out the vote," and things of that nature. Would independent expenditure be included in your idea of education?

Mr. O'STEEN. Sir, if the PAC does a "Get out the vote," and we tell them, Please vote for this reason, and vote for this candidate, we have to report it as an independent expenditure, so it comes in.

Most of what our PAC does, we report as an independent expenditure. An organization currently—currently—that simply urges people to vote may do that, or at least they have been able to prior to the last FEC regulations, which we are studying, but an organization can urge people just to vote.

Now, under these proposed bills, if it is construed that just urging people to vote would affect an election, this is defined so broadly, I am afraid that would be swept in and, if PAC's are banned, perhaps forbidden, because this sweeps in so much.

Senator FORD. Do I understand you to say, then, that as much as 75 percent of your money would be used for education and/or independent expenditures?

Mr. O'STEEN. Yes, sir, and probably more than 75; we give a small minority directly to candidates.

Senator FORD. I understand. Now, in your statement, you concentrated on those provisions of the legislation that you oppose.

Mr. O'STEEN. Yes, sir.

Senator FORD. You never said a kind word about any of them. Is there any provision of either bill that you support?

Mr. O'STEEN. Since I am testifying on behalf of our organization, we would have to go back and study this. There are elements of the bill that I—

Senator FORD. You studied it very thoroughly, because you came up with almost 99 percent opposition. I wonder if we could get one percent that we could try to—

Mr. O'STEEN. Basically, I feel the system works, and I feel that this bill has so many damaging and onerous aspects to it that I do not think this particular bill is salvageable; no, sir.

Senator FORD. That is fine, but there is nothing in there, in your mind, that you could support as of now?

Mr. O'STEEN. I would certainly want to reflect on that. Certainly, some of the other things proposed here that I did not speak to could also cause problems.

Senator FORD. Can we assume, then—and I do not like that word—that you support everything you did not speak against?

Mr. O'STEEN. No, certainly not.

The CHAIRMAN. If I could intervene for a moment and then defer to my colleague, Senator Ford does raise the need, however, for our witnesses, to the extent they are willing to do so, to try to advise the committee if there are options which they feel will be of value for this committee and eventually the Senate as a whole, if we reach a bill, to study, because you have got to take notice, Dr. O'Steen, that a great percentage of the electorate is very disturbed by this general subject, and that level of disturbance indicates to me that there is a duty upon the Congress to see what we can do to try to correct some inequities and problems that all of us are experiencing.

So if you would not only look at several bills, but perhaps come up with some concepts of your own, it seems to me that is a public responsibility that we all have.

Mr. O'STEEN. I would be happy to do that, sir. I do think there are areas that need improvement because they are areas where speech is really severely curtailed, and we do need a clarification and a tightening of the idea of coordinating an expenditure.

For instance, let me give you an example that actually happened to us. In passing, in a special election, in a conversation with a candidate where I was simply working to educate the candidate about the issues—he was a pro-life candidate—and how to address the issues, and working with him, this candidate made an offhand comment to me. We were discussing partial-birth abortions, and he said, “Boy, someone really needs”—it was just offhand—“someone needs to advertise about that.”

He did not ask me to do anything for his campaign, he did not—later, in anticipation of a vote that actually has not occurred yet, but in anticipation of a vote on that, I desired to run an ad that did not talk about the special election, did not mention the names of any of the candidates running, and really, we wanted to run the ad to create more discussion in the districts of some of the Members of Congress on this topic, and I just wanted to run an ad telling what a partial-birth abortion is, just like the ad we ran in *The Washington Post*.

Our general counsel advised me, simply because the candidate had made a suggestion that someone ought to advertise on this, that I should not run the ad because the Federal Elections Commission might interpret that ad as a contribution even though it did not mention the election, did not mention the candidate, did not mention vote, under existing regulations. And the cost of this ad in this paper was more than the contribution limit, so right there, my ability, representing the organization, to speak about this topic in this city was suppressed until after the special election because of an offhand comment with a candidate.

It has put us in a position where, as I said, in an election year, our right to petition Government is infringed upon because we are afraid—I usually go in, even lobbying now, with a member and say, “Understand we cannot talk about”—and I list all the things—“this, because I am afraid our independent expenditures will be compromised.”

So I do think—and I would be happy to go back and study it—that that is an area that needs to be addressed because even today, free speech is somewhat impinged upon.

The CHAIRMAN. I thank you, Doctor.

Senator McConnell?

Senator MCCONNELL. I would suggest that one area where we could make an improvement—my colleague from Kentucky mentioned that he spent \$700,000 running for Governor in 1971—a gallon of milk in 1971 cost 60 cents; a Ford Mustang cost \$2,500—we are talking about apples and oranges here.

One thing that should have been done in 1974 when this bill was passed—and I expect you would agree, Dr. O’Steen—is that the individual donation and the PAC donation should have been indexed for the cost-of-living.

Mr. O’STEEN. I would agree with that.

Senator MCCONNELL. As the price of television and radio has gone up exponentially, the individual right to participate has in effect shrunk over the years.

Mr. O'STEEN. Yes, sir.

Senator MCCONNELL. I want to congratulate you, Dr. O'Steen for your statement. From my point of view, it has been the best statement of anyone who has testified so far, and we have had some excellent witnesses.

I just wanted to elaborate on one point that you were making. On the whole notion that the playing field can somehow be levelled, take my State, for example. The registration is two-and-a-half to one Democratic; all the major daily newspapers are liberal; the unions are very large and very strong.

I would argue that at the beginning of a race, a relatively conservative Republican in Kentucky does not confront a level playing field; he confronts a playing field that is like that.

So the only way to level the playing field for a candidate who may not be in harmony, by voter registration, by political views, and by large membership interest group support, is to hope that he can raise enough funds to make his voice heard, to overcome the essentially imbalanced playing field. And I would argue that in every congressional district in America and in every State, the playing field is not level, and it is simply impossible to level the playing field, and that the only thing that conceivably can be done here is to allow people to speak, to allow the voices to be heard and let all the conflicting points of view have at it in our free society. And that is what, under the current system, constitutionally sanctioned by the Supreme Court in the *Buckley* case, people are largely able to do.

So this notion that somehow, the Government can intervene and level the playing field is patent nonsense and constitutionally suspect to the point of being dangerous.

I am sorry Senator Ford left. He also mentioned some notion that we were having trouble recruiting candidates because of the current system. That has certainly not been the case. There were 60 percent more candidates in 1992 than in 1990; in 1994, I know there were more—and this was unheard of; I do not think anybody believes it has happened since pre-Depression time—there were more candidates of my party who filed for United States Congress—only one of them got nominated, but more filed than at any time in history, and more than the Democrats. We have had an enormous increase in interest.

We have also had enormous turnover. There is the notion that somehow, under the current system, people are coming here and staying forever. Over half of the House of Representatives has been here less than 4 years. I have been in the Senate 11 years. I was last in seniority when I got here, and if I am still here next January, I will be in the top third. I think some of the suggestions

that have been made are completely not substantiated by the facts.

So I want to thank you for your contribution to this very important debate about the First Amendment. That is what this is about. This whole debate is about the First Amendment, and if we do it wrong, we are going to be in court, and the courts will have to clean it up again.

Just one quick question of you, Ms. Cain. You referred to the special interests a number of times during your testimony. Is the League of Women Voters a special interest?

Ms. CAIN. Some may define it as such. We believe we are in the public interest, since we have nothing to gain economically by any of the activities that we undertake on behalf of our citizens to change the system—

Senator MCCONNELL. Is the public interest then different from a special interest?

Ms. CAIN. Yes, sir. The public interest—

Senator MCCONNELL. Who defines what a public interest is?

Ms. CAIN. I will try to help you if you will allow me to.

Senator MCCONNELL. Good.

Ms. CAIN. The public interest is the combination of all of the special interests. It is everybody's concern, so you bring in everybody who has a particular point of view because of their walk of life, or where they live, or whatever. You bring that together, and that talks about the common good, that which the government is based on—representative democracy. And to the extent that we all have an equal opportunity to have input, we create the common good, the public interest, and that is what we are talking about today—everybody having an opportunity, all of these special interests. But being a special interest is not in and of itself wrong or bad; it means that you have a particular point of view, which is great. That is what democracy is based on. And we all come forward and give our opinions.

Unfortunately, the current system gives some of those special interests at least the appearance of having more influence, undue influence, and sometimes to the handicap and the detriment of the public interest. So we just need to make sure that we keep the system at a point where all of the special interests can indeed have a voice and have free speech.

Senator MCCONNELL. So your view is that your group is not a special interest, it is a public interest, and therefore it is somehow more worthy than Dr. O'Steen's group.

Ms. CAIN. Oh, no, sir. We have spent 75 years making sure that he has an opportunity to participate in the system. He is no more or no less worthy than our group.

Senator MCCONNELL. So the causes that you advance are not in any way more constitutionally protected than the causes that Dr. O'Steen advances.

Ms. CAIN. No, sir.

Senator MCCONNELL. Then, why should his PAC be eliminated?

Ms. CAIN. I beg your pardon?

Senator MCCONNELL. Then, why do you support a bill that eliminates his PAC?

Ms. CAIN. You will notice in my testimony that not everything, as we have alluded to, in this bill is 100 percent perfect. We do not necessarily agree with the PAC ban itself. We prefer the fallback position. But it is in the piece of legislation; as you know, you learn—as Mr. Clay has set the precedent for us in the State of Kentucky—you learn to compromise.

Senator MCCONNELL. So let me make sure I understand. Then, Dr. O'Steen's organization should be able to continue to express itself through its PAC contributions?

Ms. CAIN. Absolutely.

Senator MCCONNELL. Should it also continue to be able to express itself through independent expenditures?

Ms. CAIN. Yes, sir, and this bill does not negate that; it does not eliminate independent expenditures.

Senator MCCONNELL. Any reaction to that, Dr. O'Steen?

Mr. O'STEEN. First, it would, if PAC's were banned, but as I mentioned, the definition of—you have to look at this backward—the definition of "express advocacy" combined with the definition of "contribution" combine to make it far more difficult to do what would be defined in here as an "independent expenditure."

I would also like to submit, sir, if I might, that we wish to be considered a public interest organization, too.

Senator MCCONNELL. It sounds like, under the definition that Ms. Cain has put forth, a lot of people are going to want to consider themselves public interest rather than special interest, because they may end up in better shape.

Thank you very much.

Ms. CAIN. Thank you.

Senator FORD. Mr. Chairman, before they leave, if you do not mind—

The CHAIRMAN. Oh, I want to ask a question or two, but you go ahead and make your statement.

Senator FORD. I believe it was Senator Dodd who said they had a hard time recruiting candidates; I do not think I said anything about a hard time recruiting candidates.

But you know, First Amendment rights are in the eye of the beholder. Many of us have signed resolutions, cosponsored resolutions, for prayer in school. That is a First Amendment right. Some have signed or cosponsored a desecration of the flag amendment. That is a First Amendment right. Some have changed their minds as relates to that, however. But if you are for prayer in school, it has to be a First Amendment right, and that is where you would amend the Constitution.

What I am saying here is that you fight this as a First Amendment right, but you are also for other things that are also First Amendment rights.

I want to protect the First Amendment; I want to protect it as much as anybody. But things are getting to a point where I think it is time we consider how we can go about it. If you talk about independence out there—and that is beyond the beltway, and I understand “Potomac fever” about as well as anybody—out there, number one on the list of a large majority of American constituents is campaign finance reform. And if the citizen’s voice is to be heard here, sooner or later, we will get campaign finance reform, because 73 new revolutionists in the House in the first year have already raised almost \$250,000 average per candidate.

And as the distinguished Congresswoman Smith said earlier, she was schooled—schooled—in how to raise money, how to spend 15 hours a week on the telephone, what to say, and that sort of thing. I do not have any problem with that, but there is an obsession around this town to raise money, and if you raise enough money, as she said, you scare your opposition out of the race; you overwhelm the possible contender with the funds that you have that they would not be able to raise.

So there is a real question here. If you are for prayer in school, you are for amending the First Amendment. That is the way I look at it. And so, if you oppose prayer in school on the basis that it amends the First Amendment, then that is another question.

But the growing constituency out there—and I think you can look at poll after poll after poll—I would say at least 30 to 40 percent out there are looking at the ability of Congress somehow to restrict the money chase. And if we do it reasonably, if we do it fairly, if we come to a consensus that we can do some things that would limit that, I think we would all be better off.

It is that seniority—my colleague says he will be in the upper third. When I got here, I was one of the freshmen, eager to do a lot of things. I did not like the old bulls being chairman of everything around here. I did not. But after I have been here 22 years, the seniority system is not all bad. It is just where you are and what is getting ready to happen to you. I think it is probably more personal than political. I am not sure that is a good word, but it is a personal prevention thing.

The CHAIRMAN. Senator McConnell, do you want to address this issue?

Senator MCCONNELL. Yes. My colleague seems to want to have a debate with me. I am not a witness here. I do want to say that—

Senator FORD. I did not say that. I just talked about the First Amendment right. That is not a debate with you.

Senator MCCONNELL. I just want to straighten it out with you. We are talking about the free speech portion of the First Amendment here today. That is what this is about. That is what

the *Buckley* case was about. The First Amendment, as my colleague certainly knows, is also about the right to petition the Government. It is also about freedom of religion and it is also about freedom of the press. But it is the free speech part of it that is at the heart of the campaign finance debate and that is what we have been discussing here.

Thank you, Mr. Chairman.

The CHAIRMAN. I am going to ask a question or two, but I keep going back to the *Buckley* case and I would urge everybody, not only the witnesses here but others who are keenly interested in this issue, to read that landmark Supreme Court decision, which I quote. "In the free society ordained by our Constitution, it is not the government but the people individually as citizens and candidates and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a political campaign," page 424.

That brings me, Dr. O'Steen, to your testimony once again. If we passed legislation banning PAC's, and I do not favor that, speaking for myself, but were it the will of the Congress and the courts for some reason, which at this time I do not know on what basis, but if they were to sustain that, what would your organization do?

Mr. O'STEEN. It would make it in many instances illegal for us to speak and discuss issues, especially as drafted. Under this bill, as drafted, we could not criticize a candidate's vote. President Clinton has indicated that he will veto the Partial-Birth Abortion Ban Act, and I suppose it would become illegal for National Right to Life to criticize him for that after he vetoes it because we are in an election year, or any group. So it is a good question. How do you pursue issues in this country? Newspapers would continue to be able to—

The CHAIRMAN. How do many persons in your constituency then collectively address the issue? It seems to me their ability to do so is severely abridged if that were the case.

Mr. O'STEEN. It would be very difficult unless they happened to be very, very wealthy, if they are wealthy enough to buy full-page newspaper advertisements themselves. The very wealthy would not be touched by this and the news media would not be touched by this. But our voice would be pretty well silenced.

The CHAIRMAN. Do you wish to address that question?

Ms. CAIN. I was just going to say, I believe that you are able to address the issues now if only indeed you address the issues and you do not support or oppose candidates or political parties, that organizations can be formed under the laws of the land now to allow you to directly address those issues and even to speak to the various proposals that are in Congress and so forth without forming a political action committee. So you could at least address the issues. To the extent that you are supporting

and opposing candidates I think is where you cross that line into the political action committee arena.

The CHAIRMAN. Let me close with one question to both of you and I will address it first to you, Ms. Cain, and that is that if I read your testimony correctly and listened carefully, you supported a ban on the use of "party" soft money in Federal elections. Is that correct?

Ms. CAIN. Yes, sir.

The CHAIRMAN. Would this include a limit on the "get out the vote" efforts that are often funded by the parties?

Ms. CAIN. I think it would have an impact on them, yes, sir, because—

The CHAIRMAN. Let us explain what impact. It would curtail them.

Ms. CAIN. To the extent now that it is used and targeted to particular races that would help particular candidates, it has become the problem because it does begin to influence the election. We need to find a way to stop that. It is a way around the limits. It is a loophole to allow parties to really support a particular candidate in a particular race or district and we need to find ways to stop that because it is unfair.

The CHAIRMAN. Would you also limit funding of "get out the vote" efforts by organizations other than the parties?

Ms. CAIN. I do not believe so, no.

The CHAIRMAN. I thank you both very much for your very valuable contributions.

The CHAIRMAN. We will now have the third panel, Colonel Billie M. Bobbitt, Mr. John Dye, Ms. Linda DeVries, and Mr. James Bopp.

I will take the responsibility and that is that this hearing has proceeded longer than I anticipated. Indeed, it has resulted in some witnesses being inconvenienced. But I say the subject is so important that I am glad we are consuming considerable amounts of time. Certainly, this committee henceforth will try and schedule panels to allow more flexibility in the timing. But we are now confronted with the fact that some of our witnesses in this panel have flights and commitments and I would like to have each of you address the chair as to what your individual situation is.

I am also going to ask first that we have unanimous consent that your entire statements be made a part of the record but that each of you limit your opening comments to, say, 5 minutes and I will ask the clerk to inform the chair at the expiration of that 5-minute period.

Colonel Bobbitt, my understanding is you have a flight and therefore we would like you to lead off.

Col. Bobbitt. Thank you, sir.

The CHAIRMAN. Are there others who have a time problem that would require an adjudication by the chair as to the order of appearances?

[No response.]

The CHAIRMAN. I thank you again for your participation and understanding. Colonel Bobbitt?

TESTIMONY OF A PANEL CONSISTING OF COLONEL BILLIE M. BOBBITT, U.S. AIR FORCE (RETIRED), SIDNEY, OHIO; JOHN DYE, PRESIDENT, VIRGINIA RURAL LETTER CARRIERS' ASSOCIATION, LEBANON, VIRGINIA; LINDA DEVRIES, R.N., CRNFA, AMERICAN NURSES ASSOCIATION, LOUISVILLE, KENTUCKY; AND JAMES BOPP, JR., FREE SPEECH COALITION, INC., TERRE HAUTE, INDIANA

Col. BOBBITT. Thank you, sir. Mr. Chairman, I am Colonel Billie M. Bobbitt, United States Air Force, Retired, and I am from Sidney, Ohio.

The CHAIRMAN. I would be very much interested in just a brief sketch of your professional career.

Col. BOBBITT. It is in here.

[Laughter.]

The CHAIRMAN. I know that, but the problem is that the viewers might not have access to that full statement. I will give you an additional few seconds to talk about that.

Col. BOBBITT. Thank you, sir. I think we could sum it up by saying primarily in the Air Force, I was the Director of Women in the Air Force before I retired and deeply involved in women's opportunities and that is basically why I am here.

The CHAIRMAN. Good.

Col. BOBBITT. I do appreciate very much the opportunity to speak here today and I would like to make it very clear that I am not here as a representative or spokeswoman for any group or organization but as an individual. I am a member of EMILY's List, the political network for pro-choice Democratic women. But I have no title or official responsibilities with the organization. I have never been employed by EMILY's List. Some money has changed hands, but I can assure you it was from me to them. I am one of the 35,000 active members from all 50 States. Along with voting, and I might mention I have not missed an election in 51 years, EMILY's List is the primary means through which I participate in the electoral process.

I would like to point out that I am by no means an expert on campaign finance or any legislation you might be considering on the topic. I am hopeful, however, that as you consider this topic, you will take into consideration the political rights of citizens like me.

Now that I have told you what I am not, I would like to tell you a little bit about what I am. I am a retired Air Force Colonel. I enlisted in the Navy during World War II and later served in the Air Force during the Korean Conflict and the war in Vietnam. I retired from active duty in the Air Force in 1975 after 27 years.

At the time of my retirement, I was Director of Women in the Air Force.

I served all those years in the military because I love my country and I do indeed cherish our democratic ideals. I would like to think that the reason I became the Director of Women in the Air Force is because I was instrumental in the commitment to American women by developing policies to permit fuller utilization of the talents and capabilities of Air Force women worldwide.

When I see the marvelous things our courageous young women are doing today in the military, I like to think that I played some small role in expanding their opportunities to serve their country.

The CHAIRMAN. Let me commend you for that statement.

Col. BOBBITT. Thank you, sir.

The CHAIRMAN. I, likewise, joined the Navy in World War II—

Col. BOBBITT. I know you did, sir.

The CHAIRMAN. I have a constant feeling that I am here to help pay back what was done for me so that this generation and future generations have those same opportunities that I had. I thank you for raising that, Colonel.

Col. BOBBITT. I certainly hope that will be true. That is the same kind of thinking, the same kind of commitment that brought me to EMILY's List when it started in 1985. I did not know the women who were starting EMILY's List that year. I thought it was a good idea and I wanted to be part of it.

So in 1985, I sent my first \$100 check and became a member of EMILY's List. I did that primarily because there was not a single Democratic woman in the United States Senate. There were only two Republican women, Senators Paula Hawkins and Nancy Kassebaum. Senator Kassebaum, I would like to add, has always been a champion of women in the military. Meanwhile, the number of Democratic women in the House of Representatives had gone from 14 at the time the post-Watergate campaign finance reform was passed in 1974 to 12 in 1985.

Women had been moving up everywhere else in that time, in the military, in industry, in education, and in virtually every facet of American society, but there was one glaring exception. The one institution that should have been the most representative of all, the United States Congress, seemed nearly impossible for women to crack.

I do not think that was right then and I still do not. But since the decade of EMILY's List, when it began, more women than ever have been elected to Congress and EMILY's List is one of the big reasons why. It allowed women to compete and win. Before EMILY's List, women could not raise the money to compete against the old-boy network. And let us be frank here. The old-boy network is not just a phrase, it is a reality. Since women could not tap into the network, they could not raise money and they could not win.

The idea central to EMILY's List is the acronym that forms its name, Early Money Is Like Yeast. The point is to raise funds for good women candidates early in their campaign so their candidacies are taken seriously. Once they are taken seriously, they are able to raise the funds they need to compete.

Basically, the EMILY's List network works this way. Members receive profiles of women candidates in the mail. There are usually six to eight candidates for the House, the Senate, or gubernatorial seats in some States. They are profiled in each mailing. EMILY's List answers the key questions about these candidates. We learn who these women are, where they are running for office, what the political situation is in their district or State, and where they stand on key issues.

That is critical information because it is fine for someone like me to say, I want more women representing me in Congress, but I cannot do much about it if I do not know who the good women candidates are and where they are running. It is hard enough to learn of women running for the Senate or for Governor in other States. It is just about impossible to find out about candidates for the House of Representatives.

Once the EMILY's List mailing goes out, it is up to the individual members to decide which candidates to send a check to. There are usually some candidates I like more than others, so they are the ones I contribute to. Then I send the check back to EMILY's List. This is what is called bundling, which I know Common Cause and others criticize, but to me, it is just good old American democracy at work.

If I want to write three different checks to three different candidates, I can put all three checks in one pre-addressed, postage-paid envelope and drop it in the mail to EMILY's List. I do not have to find out the candidate's mailing addresses or run around the house looking for stamps and envelopes. With EMILY's List, it is a one-shot deal and it makes it easy for me as an ordinary citizen to participate.

I understand Common Cause wants to clean up the candidate finance system but that is exactly what EMILY's List is doing. The power brokers and big money are going to be a factor in campaigns no matter what you do. Everybody knows that. So what you need is to bring more citizens into the process as a counterweight. EMILY's List has brought thousands of new donors into the political system. The average donation to candidates by EMILY's List members in 1994 was \$92 and nearly three-quarters of our contributions went to challengers.

That is not bad for the system. That is good for the system. All those thousands of small contributions are able to offset the big money coming from the rich and the powerful. We are making the system more participatory and more competitive and every EMILY's List contribution is fully disclosed.

Once a candidate recommended by EMILY's List wins, she is on her own. EMILY's List does not lobby anybody, and I am glad

they do not. I want to help elect smart, political, principled women to office. I do not think we need to badger them once they are in office.

You cannot have a healthy democracy without competition. EMILY's List has made it possible for people like me to compete against powerful interests and it has made it possible for women candidates to compete against well-financed opponents. I hope you agree with me that many of these women have turned out to be excellent Representatives and Senators. Yet without EMILY's List, I would never have known that many of these fine women were running for office.

There is another critically important aspect of being an EMILY's List member that I want to discuss briefly. I guess you could say I am a joiner. I joined the service when I was young and I stuck with it. I have been on the national board of directors of Common Cause. I am a member of the League of Women Voters. I am a member of the American Association of University Women. I belong to the Women's Legal Defense Fund. An, of course, I am a member of EMILY's List.

When De Tocqueville wrote his famous chronicle of America, he marveled at the rich civic life of this young nation, noting that Americans seemed forever to be forming associations of one kind or another, including political associations.

My membership in EMILY's List is a way for me to be connected to the political life of this nation and to my fellow citizens. It allows me to band together with others, share my views, and for us to work for a common end. I do not pretend to be a constitutional scholar, but I, like most Americans, carry with me an almost innate knowledge of the First Amendment rights of citizenship—freedom to practice religion, freedom to speak my mind, freedom to assemble with fellow citizens in support of a common goal.

I believe without a doubt that my membership in EMILY's List is secured by such rights and I believe that organizations like EMILY's List which encourage political participation by average citizens are in the best tradition of American democracy and I am proud to be a member. Thank you.

The CHAIRMAN. Colonel, we thank you. I like the way you said, "I like those freedoms," and you have the freedom of a colonel to tell a seaman chairman, "I am going to take more than my 5 minutes." And you did that.

[Laughter.]

Col. BOBBITT. But I hurried.

The CHAIRMAN. Could you remain just for a question?

Col. BOBBITT. Yes, sir.

Senator MCCONNELL. I understand you have to go. It is correct, is it not, that EMILY's List is essentially out of business if S. 1219 passes?

Col. BOBBITT. I beg your pardon, sir?

Senator MCCONNELL. EMILY's List is effectively out of business if S. 1219 passes, is that not correct?

Col. BOBBITT. The word "effectively" is the key.

Senator MCCONNELL. Right.

Col. BOBBITT. It would greatly hamper our efforts if we could not bundle the contributions of a mutual group of people.

Senator MCCONNELL. There is one other part of the bill that would adversely impact your right to participate in the political process, too, that you did not touch on and I just wanted to bring up very quickly. Under S. 1219, 60 percent of the money in a campaign must come from within a State and only 40 percent can be taken from outside a State. I gather in many cases, EMILY's List money, in addition to coming early, may come late—

Col. BOBBITT. Yes, sir.

Senator MCCONNELL. —and you could have a situation, could you not, where a campaign simply had to send your check back to Ohio because they are going toward the finish line, they are trying to sit there and calibrate what percentage is in-State and what percentage is out-of-State, and it could well be that they cannot take your contribution from Ohio to help them because their in-State/out-of-State balance is not there. So in that sense, it could also take EMILY's List off the playing field toward the end of a campaign as well as the beginning.

Col. BOBBITT. I am not sure it would take us off the playing field, at least it would not me. Somehow, I have the utmost confidence that this is not going to happen.

Senator MCCONNELL. I sure hope you are right. That is all I have, Mr. Chairman.

The CHAIRMAN. Fine. Thank you.

[The prepared statement of Col. Bobbitt follows:]

PREPARED STATEMENT OF COL. BILLIE BOBBITT (USAF-RETIRED), SIDNEY, OH, MEMBER, EMILY'S LIST

Mr. Chairman, I'm Colonel Billie Bobbitt of Sidney, Ohio, and I appreciate the opportunity to speak here today. First, I should make it clear that I am here not as a representative or spokeswoman for any group, but as an individual. I am a member of EMILY's List, the political network for pro-choice Democratic women. But I have no title or official responsibilities with the organization. I have never been employed by EMILY's List. (Some money has changed hands, but I can promise you it only flows one way—that's from me to them.) I am one of the organization's 35,000 active members from all 50 states. And along with voting—and I haven't missed an election in 51 years—EMILY's List is the primary means through which I participate in the electoral process.

I would also like to point out that I am by no means an expert on campaign finance or any legislation you might be considering on that topic. I am hopeful, however, that as you consider this topic you will take into consideration the political rights of citizens like me.

Now that I've told you what I am not, I'd like to say a little bit about what I am. I am a retired Air Force Colonel. I enlisted in the Navy during World War II and later served in the Air Force during the Korean Conflict and the war in Vietnam. I retired from active duty in the Air Force in 1975 after 27 years. At the time of my retirement I was Director of Women in the Air Force.

I served all those years in the military because I love my country and I cherish our democratic ideals. I became Director of Women in the Air Force in part due to my commitment to American women. I believe I was instrumental in developing policies to permit fuller utilization of the talents and capabilities of Air Force women worldwide. I worked hard to help integrate women into the USAF workforce and into many new career fields. I sought to increase the professional educational opportunities for women of all grades.

When I see the marvelous things our courageous young women are doing today in the military, I like to think I played some small role in expanding their opportunities to serve their country.

That's the same kind of thinking, the same kind of commitment, that brought me to EMILY's List when it started in 1985. I didn't know the women who were starting EMILY's List that year. But I thought it was a good idea and I wanted to be part of it.

So in 1985 I sent off my first \$100 check and became a member of EMILY's List. Let me tell you why. At that time there was not a single Democratic woman in the United States Senate. There were only two Republican women, Senators Paula Hawkins and Nancy Kassebaum. Senator Kassebaum, I'd like to add, has always been a champion of women in the military. Meanwhile, the number of Democratic women in the House of Representatives had gone from 14 at the time the post-Watergate campaign finance reforms were passed (1974) to 12 in 1985. Women had been moving up in the military, in education, in industry, in virtually every facet of American society. But there was one glaring exception. The one institution that should have been the most representative of them all, the U.S. Congress, seemed nearly impossible for women to crack.

I didn't think that was right. I still don't. But in the decade since EMILY's List began, more women than ever have been elected to Congress. And EMILY's List is a big reason why. EMILY's List has allowed women to compete and win. Before EMILY's List, women couldn't raise the money to compete against the old-boy networks. And let's be frank, here. That old-boys network isn't just a phrase, it's a reality. Since women couldn't tap into the network, they couldn't raise money and they couldn't win.

The central idea of EMILY's List is the acronym that forms its name: Early Money Is Like Yeast. The point is to raise funds for good women candidates early in their campaigns so their candidacies are taken seriously. Once they're taken seriously, they're able to raise the funds they need to compete.

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That's critical information. Because it's fine for someone like me to say I want more women representing me in Congress. But I can't do much about it if I don't know who the good women candidates are or where they're running. It's hard enough to learn of women running for Senate or Governor in other states; it's just about impossible to find out about candidates for the House of Representatives.

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This is what's called "bundling", which I know Common Cause and some others have criticized. But to me it's just good old American democracy at work.

If I want to write three different checks to three different candidates, I can put all three checks in one pre-addressed, postage-paid envelope and drop it in the mail to EMILY's List. I don't have to find out the candidates' mailing addresses or run around the house looking for stamps and envelopes. With EMILY's List, it's a one-shot deal. It makes it easy for me to participate.

Now, I understand that Common Cause wants to clean up the campaign finance system. But that's exactly what EMILY's List is doing. The power brokers and big-money interests are going to be a factor in campaigns no matter what you do.

Everybody knows that. So what you need is to bring more average citizens into the process as a counterweight. EMILY's List has brought thousands of new donors into the political system. The average donation to candidates by EMILY's List members in 1994 was \$92. And nearly three-quarters of our contributions went to challengers.

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There is another critically important aspect of being an EMILY's List member that I want to discuss today. I guess you could say I'm a joiner. I joined the service when I was young and I stuck with it. I've been on the national board of directors of Common Cause. I'm a member of the American Association of University Women. I'm a member of the League of Women Voters. I belong to the Women's Legal Defense Fund. And, of course, I'm a member of EMILY's List.

When De Tocqueville wrote his famous chronicle of America, he marveled at the rich civic life of this young nation, noting that Americans seemed forever to be forming associations of one kind or another, including political associations.

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I believe without a doubt that my membership in EMILY's List is secured by such rights. And I believe that organizations like EMILY's List, which encourage political participation by average citizens, are in the best tradition of American democracy. I am proud to be a member.

Thank you.

The CHAIRMAN. Mr. Dye?

TESTIMONY OF JOHN DYE, VIRGINIA RURAL LETTER CARRIERS' ASSOCIATION, LEBANON, VA

Mr. DYE. Good morning, Mr. Chairman and Senators. My name is John Dye. I am from Lebanon, Virginia, and I am President of the 2,600-member Virginia Rural Letter Carriers' Association, a postal union and branch of the National Rural Letter Carriers' Association.

The CHAIRMAN. Are you speaking for the Association?

Mr. DYE. I am speaking on behalf of the Virginia Rural Letter Carriers' Association, yes, sir.

The CHAIRMAN. May the record show that in my lifetime, most specifically—

Mr. DYE. I am getting ready to—

Senator FORD. You have been a letter carrier, too?

The CHAIRMAN. Yes, I was a letter carrier.

[Laughter.]

Mr. DYE. And I am proud to recognize that you were a postal worker and a letter carrier in the beginning of your distinguished and varied career.

The CHAIRMAN. I thank you very much, Mr. Dye.

Mr. DYE. Thank you for inviting us to testify about a very difficult issue and that is campaign reform. It must be a very difficult issue because Congress has been debating it for as long as I can remember. Although there have been many and varied proposals put forward, until a crisis arises like it did in the early 1970's, it seems that much is talked about and little is changed.

PAC's were a part of the reforms that occurred in the 1970's. The rural letter carriers do what many other unions, trade associations, and corporations do, and that is collect and pool voluntary contributions from large numbers of our members. We do this so that our voice may be heard on issues of concern to our members. Former Senator David Durenberger said that PAC's were the United Way of politics. I suppose he meant by that that we collect small contributions from many people, and in the Virginia Rural Letter Carriers' Association, we do just that.

The average rural letter carrier earns approximately \$36,000 a year and we live across the State of Virginia. As a postal worker, I tend to think in postal terms. There are 1,254 zip codes in the State of Virginia and we receive contributions from rural letter carriers who live in 226 of those zip codes. Their contributions averaged just under \$26 apiece in one year. About 25 of our members gave \$100, and obviously, everyone else gave less.

I believe that contributing to PAC encourages our members' participation in the election and political process because they have now become investors in that process. I think that part of your goal is to increase participation. The recent Oregon Senate mail-in experience, in addition to giving the Postal Service more business, showed that participation was increased. In a time of great public cynicism, that is a positive sign. I have found that each rural carrier who has a stake in the election then encourages their family members and friends to also be responsible citizens and go out and vote.

The news media and many in the public are critical of PAC's because we represent special interests. I work for a government agency, the United States Postal Service, which, incidentally, delivers 518 million pieces of mail a day and 40 percent of the world's volume. The Postal Service has a clear mission to perform for its customers. As an employee, I am concerned that Congress might change the Postal Service or its mission. Additionally, I have concern about my Federal pension rights and Federal health insurance program. I acknowledge that our PAC and that I have special interests, but I believe most citizens have some interest, and should have interest, in what their government is doing, and I think this is positive.

A lot of average citizens who go to work and deliver the mail every day and are involved in their community give to our political action committee and we believe it is a good thing. We appreciate the difficult job that you all have in trying to create a new and better campaign reform law and we thank you for giving us this opportunity once more to have our voice heard.

[The prepared statement of Mr. Dye follows:]

PREPARED STATEMENT OF JOHN E. DYE, PRESIDENT, VIRGINIA RURAL
LETTER CARRIERS' ASSOCIATION, LEBANON, VA

Good morning, Mr. Chairman and Senators. My name is John E. Dye. I'm from Lebanon, Virginia, and I am the President of the 2,600 member Virginia Rural Letter Carriers' Association, a postal union and branch of the National Rural Letter Carriers' Association. Our national association maintains a political action committee.

Chairman Warner, I am proud to recognize you were a postal worker and a letter carrier in the beginning of your distinguished and varied public career. Thank you for inviting us to testify about a very difficult issue and that is campaign reform. It must be a very difficult issue because Congress has been debating it for as long as I can remember. Although there have been many and varied proposals put forward, until a crisis arises like it did in the early 1970's it seems that much is talked and little is changed.

PAC's were part of the reforms that occurred in the 1970's. The rural letter carriers do what many other unions, trade associations and corporations do, and that is collect and pool voluntary contributions from large number of our members. We do this so that our voice may be heard on issues of concern to our members. Former Senator David Durenberger said that PAC's are the United Way of politics. I suppose he meant by that that we collect small contributions from many people and in the Virginia Rural Letter Carriers' Association, we do just that.

The average rural letter carrier earns approximately \$36,000 a year, and we live all across the state of Virginia. As a postal worker, I tend to think in postal terms. There are 1,254 zip codes in the state of Virginia, and we receive contributions from rural letter carriers who live in 226 of those zip codes. Their contributions averaged just under \$26 a piece in one year. About 25 of our members gave \$100 and obviously, everyone else gave less.

I believe that contributing to PAC encourages our members' participation in the election and political process because they have now become investors in the process. I think part of your goal is to increase participation. The recent Oregon Senate mail-in experience, in addition to giving the Postal Service more business, showed participation was increased. In a time of great public cynicism, that is a positive sign. I have found each rural carrier who has a stake in the election then encourages their family members and friends also to be responsible citizens and to go vote.

The news media, and many in the public, are critical of PAC's because we represent special interests. I work for a government agency, the U.S. Postal Service, which incidently, delivers 518 million pieces of mail a day and 40 percent of the world's volume. The Postal Service has a clear mission to perform for its customers. As an employee, I have concern that Congress might change the Postal Service or its mission. Additionally, I have concern about my federal pension rights and the federal health insurance program. I acknowledge that our PAC and I have special interests. But I believe most citizens have some interest, and should have interest, in what their government is doing. This is positive.

A lot of average citizens who go to work and deliver the mail every day and are involved in their community, give to our political action committee, and we believe it is a good thing. We appreciate the difficult job that you all have in trying create a new and better campaign reform law, and we thank you for giving us the opportunity once more to have our voice heard.

The CHAIRMAN. Thank you for making this journey up, Mr. Dye. Speaking on behalf of your organization and irrespective of our politics, our professions in life are all highly dependent and highly grateful for the services of those who deliver the mail. I heard an old-timer down in Virginia tell me one time, he said, the only reason for the Federal Government is to keep the enemy from our shores and to deliver the mail, and here we are.

We will have Ms. DeVries next. Thank you.

TESTIMONY OF LINDA DEVRIES, AMERICAN NURSES ASSOCIATION, LOUISVILLE, KY

Ms. DEVRIES. Good morning. I am Linda DeVries. I am a registered nurse and I work in the operating room in Louisville, Kentucky. I am a member of the Kentucky Nurses Association and I am here to discuss the proposal to eliminate political action committees.

I am a member of the ANA Political Action PAC, but I am not employed by them, nor do I hold any appointed or elected office with them. The written testimony that has been submitted was prepared by the American Nurses Association's Political Action Committee but you can see that mine was prepared by me.

The CHAIRMAN. Then you are speaking for yourself or for your organization?

Ms. DEVRIES. I am speaking for both.

The CHAIRMAN. For both?

Ms. DEVRIES. Yes. The written statement was prepared by the American Nurses Association's Political Action Committee and I have prepared my own testimony.

I am not opposed to all reform but I am opposed to the elimination of political action committees. Health care is important to all of us. It touches all of our lives through many ways, a fevered child, an aging parent, a new high blood pressure medicine, a chronic ache that flares with exercise. The means for the impact of health care seems endless. One out of every four articles in the newspaper deals with health. While I am aware that health care is not the issue for debate here today, I am concerned that what may be decided or influenced here may have a serious impact on who will speak on this very sensitive and critical issue that we know to affect the daily life of every American citizen.

There are 2.2 million nurses in America. The majority of these nurses see health care, the good and the bad of it, daily, often on a 24-hour basis, 7 days a week. They see it delivered in an array of encompassing settings, from the hospitals to the homes, in the schools, in the workplace, in the community center, and in managed care settings. Nurses have a first-hand, working, front-line knowledge of the inequities and problems with our nation's health care system. We also know what is good about

the system and what needs to be maintained in order to protect the quality of this care.

Nurses are the largest group of health care providers in the nation. With all these statements I have made about nurses, you may want to know that if we are so many in number, see so much, and know so much about health care, why have you not heard a lot from us? Here is the answer. Nursing is predominantly a female profession. Nationally, our average is 96.8 percent female. Our annual average salary is \$40,000. In the labor environment, nurses are not the power brokers in policy setting or decision making. Rather, those powers rest with the more prominent voices of the physicians, the hospital administration, and the insurance company.

These three statistics about the nursing profession contribute to make it a portion of that population who have historically had poor representation and who have been slow to affect change in the political arena. However, this must change and it is changing. It is imperative to the health care of this nation that America's nurses be heard and that we become an involved and integral part of the legislative and political process.

Nurses feel this opportunity and this obligation. Actually, we want to have this obligation and this responsibility. We need to speak our concerns and you, as legislators, need to hear them. Nurses are making progress in our march to be heard. As an example, I am here today.

Our political process has, in a great part, been due to the activities of our political action committee. Through the process of collective action, our PAC hears the voice of concern of one nurse, takes that voice, and amplifies it with the voices of other nurses. Now, collective action and collaborative effort, they sound so simple, almost trite, somewhat passe, but they do work. The American Nurses Association PAC is an example of how we have pooled our resources and have been able to make an effect.

With the restrictions on contribution limits that are imposed on a Federal PAC, my PAC's contribution is equal to that of a financially stronger group. In this regard, PAC activities function as a great equalizer. On an individual basis, an employer, a surgeon, or an insurance representative may have more resources for contribution than I have, but when it comes to the political arena of PAC contributions, their PAC has no more influence than my PAC. This serves to make the playing field a little more even. The elimination of PAC's would do no more than move the influence back to that of an individual basis, and on an individual basis, I am limited in how I can compete.

At present, my PAC is the third largest PAC in dealing with health care issues. Do not silence us now. We have just begun to take and to make our stand.

I know that one of the issues driving the force to eliminate PAC's is the concern over the degree of influence, or undue influence, that PAC's bring to bear on legislators. I believe that

this concern is somewhat misappropriately placed. Put the concern where it needs to be, and that is with the individual legislator and the voter. I believe that both can handle it. Any legislator that would be unduly influenced by a PAC contribution solely would equally be open for influence by individual, or non-PAC, contributions.

All that the elimination of PAC contributions accomplishes is to erase the capability of professions, such as mine, to join forces to equalize the voice or input of other pressures. I trust that my Senators will be able to handle the pressure brought to bear by a political PAC influence. Give the office of the legislator the respect it deserves by maintaining the responsibility for integrity and accountability with the individual Congressman.

As a final remark, I offer you an old adage that we use in Kentucky. I know, Senator Ford, you have heard it, and probably you as well, Senator McConnell. That adage is to be mindful not to throw the baby out with the bath. The message here is quite simple. While seeking to throw out, or reform, those things that are of no value, be mindful to save or protect those things which are good.

A means which allows for the collection of many voices to be heard through one speaker is good. Not only is it good, it is the same principle employed in your representation of your constituents. Let me have my voice and let my PAC represent me and corral the voices of my colleagues and harness that voice into a more effective means of speech in the political arena. Save my means of equalizing the financially stronger voice.

I thank you for this esteemed privilege to speak to this committee.

[The prepared statement of Ms. DeVries follows:]

PREPARED STATEMENT OF LINDA DEVRIES, AMERICAN NURSES
ASSOCIATION, LOUISVILLE, KY

The American Nurses Association (ANA) is the only full service professional association representing the nation's 2.2 million registered nurses, including staff nurses, nurse practitioners, clinical nurse specialists, certified nurse midwives, nurse researchers, nurse educators, nurses administrators, and certified registered nurse anesthetists through its 53 state and territorial nurses associations. ANA advances the nursing professional by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and lobbying Congress and the regulatory agencies on health care issues affecting nurses and the public.

A Political Action Committee is a legal organization authorized by the Federal Election Commission to collect voluntary contributions from a certain group of people and to use this money to support candidates running for office. Today, there are approximately 4,000 Political Action Committees (PAC's) registered with the Federal Election Committee. Federal law restricts the maximum amount a Federal PAC can contribute to a candidate to \$5,000 per election.

ANA-PAC

In 1974, the American Nurses Association (ANA), first established a political action committee, entitled N-CAP (Nurses Coalition for Action in Politics). ANA later changed the name of the PAC to ANA-PAC in order to comply with Federal election law. The purpose of ANA-PAC is to support candidates who share ANA's

views on health care quality and access issues and to advance nursing's political agenda.

ANA-PAC obtains contributions from the members of State Nurses Associations to support candidates for Federal office who have demonstrated their support for the legislative objectives of the American Nurses Association. Many State Nurses Associations also have their own state political action committees, but they contribute only to statewide political campaigns. ANA-PAC works in close cooperation with the state and local political programs of the State Nurses Association, but maintains a distinct identity.

ANA Members

Most of the ANA's members are staff nurses who work in hospitals, although ANA also represents nurse educators, nurse researchers, advanced practice nurses, nurses in community clinics and home health, and nurses in administrative positions, among others. In October 1994, ANA conducted a poll of its membership to ascertain, among other things, the profile of a "typical member" of the association and her/his political beliefs. The "average" member of a State Nurses Association is female (95 percent of the sample), white (86 percent), between 35 and 49 years of age (53 percent), has an associate or bachelor's degree in nursing (64 percent), works in hospital (59 percent), is a staff nurse (53 percent), has been in nursing for 20 or more years (50 percent), works as a nurse full-time (67 percent), and has been in her current position for five or more years (51 percent). In addition, the majority of ANA's members are working women with children, and many are single parents.

ANA-PAC Contributors

ANA-PAC is comprised of individual nurses working on the front lines of health care. ANA-PAC provides an opportunity for nurses with common interests to participate in the democratic process. It allows those nurses to have a collective and powerful voice on the issues of fundamental importance to their profession. ANA-PAC has provided a unique opportunity for nurses to put themselves on equal footing with wealthy donors and interest groups such as hospitals, doctors, businesses, and insurance companies.

ANA-PAC is the third largest health care political action committee in the United States. Furthermore, ANA-PAC was the fastest growing association PAC from the 1991-1992 election cycle to the 1993-1994 election cycle. This rapid growth was due to the thousands of nurses who contributed to ANA-PAC. ANA-PAC donations are comprised of numerous small donations rather than a few large donations. The salaries of registered nurses are limited. The national average salary for a registered nurse in 1995 employed as a staff nurse in a hospital totaled \$40,019. These relatively low incomes for nurses across the country prevent them from making large contributions to any political campaign. However, through ANA-PAC, nurses can participate in the political process on an equal basis with their counterparts in the health care industry.

In 1995, the average contribution to ANA-PAC was \$46. ANA-PAC does have a "high donor program" for contributions for \$250 and above. In 1995, 117 individuals were able to contribute to this high donor program. Members of the State Nurses Association contribute to ANA-PAC because they understand that the most effective method for securing an equitable and quality health care system of health care delivery for everyone in this country is through their involvement in the political process.

The ANA-PAC Endorsement Process

The ANA-PAC Board of Trustees has developed an endorsement process that requires a significant amount of participation from nurses in every state and Congressional District. No ANA-PAC endorsement is made without the approval of a representative from the State Nurses Association. Local nurse liaisons must meet with all candidates requesting ANA-PAC support to discuss the legislative agenda of ANA and the specific concerns of nurses in the candidate's District or state. This process has proven to be the most effective means to ensure the active involvement of those nurses who will be directly affected by the outcome of the

election. ANA-PAC contributes to both incumbents and challengers in Congressional elections and make special efforts to support women and minorities.

ANA's Political Education Programs

ANA's political activities are not limited to the political action committee, but are also devoted to the political education of nurses. As an association interested in promoting the political awareness and education of individual nurses, ANA-PAC encourages nurses not only to contribute money, but also time to political campaigns. Through ANA's grassroots program, N-STAT (Nurses Strategic Action Team), ANA has identified a nurse in every Congressional District whose primary responsibility is to communicate nursing's legislative and regulatory agenda directly to policy makers. These individuals play a leadership role in organizing grassroots mobilization activities around key health issues as well as organizing nurses to work on political campaigns. N-STAT is comprised of over 40,000 nurses who volunteer to write letters and make phone calls on critical Federal legislative issues. These individual nurses play a key role in advancing nursing's legislative agenda.

ANA also conducts extensive political education training to help nurses learn more about how their government works, and as a result nurses around the country are anxious to participate in the political process. ANA's political education program teaches nurses how to become involved in political campaigns, how to run for public office themselves, and how to voice their opinions in the legislative process.

ANA's Position on Campaign Finance Reform

Political action committees increase citizen participation in our nation's political and legislative processes. Political action committees encourage the participation of small donors and make campaign money accountable to the public. Eliminating political action committees will prohibit the working people of our country from playing a vital role in our political process. As citizens, nurses have not only the right, but also an obligation, to make their views known to their public officials. It is this freedom that makes our country unique. Political action committees are a vehicle that permits more individuals, such as nurses, to participate in our political process.

The American Nurses Association and the ANA-PAC oppose placing restrictions disabling political action committees, or worse eliminating them altogether. We believe that PAC's are instrumental in involving ordinary citizens in the electoral process; we know that ANA-PAC is critical to the involvement of individual nurses in that process. During the 1993-1994 election cycle, ANA-PAC raised approximately \$1.2 million and increased its donor base to 28,000 individual contributors.

Are PAC's merely a vehicle for "special interests"? Is ANA-PAC? Yes, the interests of America's nurses are special: securing safe, quality and affordable health care for everyone; ensuring that communities have the resource to care for their own populations; ensuring that our public health systems stay strong enough to promote healthy lives; ensuring that our highways and workplaces are safe. Involvement in ANA-PAC is one way that nurses are speaking with one strong voice about the critical health care concerns facing our nation. We urge you not to silence that voice.

During the 1993-1994 election cycle, the average ANA-PAC contribution per ANA member was \$5.50.

Senator MCCONNELL. [Presiding.] Thank you, Ms. DeVries. I appreciate your being here.

Mr. Bopp, please try to observe the 5-minute limit. We would really appreciate it, because I know you all have places to go and we do, too. Thank you.

TESTIMONY OF JAMES BOPP, JR., FREE SPEECH
COALITION, TERRE HAUTE, IN

Mr. BOPP. I will. Thank you very much, Senator.

My name is James Bopp, Jr. I am an attorney at law and I appreciate the opportunity to testify before the committee. I am speaking on behalf of one of my most interesting clients, the Free Speech Coalition. The Free Speech Coalition was formed in 1993 by liberal, conservative, and non-ideological advocacy groups that range from the American Conservative Union to the Fund for the Feminist Majority to the National Rifle Association and Gun Owners of America to the Coalition to Stop Gun Violence and the Committee Against Hand Gun Violence, as well as abortion rights advocacy groups and the group that I serve as general counsel, which is the National Right to Life Committee.

I am speaking, unless I otherwise indicate, on their behalf, that is, on behalf of this diverse group of 50 not-for-profits who are seeking to maximize their ability to issue advocate and to maximize the opportunities of citizens to participate in the electoral process.

Because of my election law background—I have participated in almost a dozen, now, cases challenging on constitutional grounds various State and Federal election laws—my testimony will focus on the constitutional parameters of any campaign finance reform effort to be undertaken by this Congress.

The courts have established a framework for regulation built on the requirements of the First Amendment. I think these are firmly established and anyone who thinks that there is any hint that the Supreme Court is going to back away from these, I think, is mistaken. The reason is that these protections are vital to our democratic process.

Finally, if the time allows or if asked, I will be happy to comment on eight specific changes in Federal election law that I think could be made to enhance speech that this Congress should seriously consider.

The Supreme Court has rejected the point of view that seems to have formed the basis for some election law proposals. First, the point of view that the First Amendment is a loophole in the Federal Election Campaign Act that should be narrowed or closed. First Amendment-protected freedoms are vital to our representative democracy and they should be respected. They should also be respected not only by the courts but by this Congress.

I am greatly distressed when proposals are set forward that are known to be unconstitutional with fallback provisions which will require not-for-profit organizations to spend their own resources against the resources of the Federal Government in order to vindicate their own First Amendment rights.

Secondly, there seems to be a view that the political system is only about elections, that it is not about political ideas or the accountability of representatives of the people to the voters for their positions on issues.

Third, there seems to be a view that the only answer to equalizing speech is to stifle, suppress, punish and penalize the speech of some in order to thereby enhance the speech of others, and I think the Supreme Court has clearly rejected all three of those approaches.

The constitutional framework begins with *Buckley v. Valeo* in 1976, which established and reaffirmed that political speech is at the core of the First Amendment freedoms. The authors of the First Amendment were not thinking about displaying obscenities on your t-shirts or thinking about flag burning or even nude dancing when they authored the First Amendment. They were thinking about political speech, which they considered to be "indispensable democratic freedoms." That is, the freedom to speak, the freedom of press, assembly, and to petition government are political freedoms that allow and protect the rights of citizens to participate in a representative democracy and compete in the marketplace of ideas.

Secondly, issue advocacy is protected against government regulation. For the purpose of regulation by government, issue advocacy must be distinguished from active electioneering. Issue advocacy may not be regulated and enjoys the highest form of First Amendment protection.

To distinguish between issue advocacy and active electioneering that is subject to possible regulation, the Court has adopted the express advocacy test. This express advocacy test requires explicit words or express terms that expressly advocate the election or defeat of a candidate, such as "vote for", "support", or "defeat."

The Senate and House bills under consideration here purposefully, I believe, attempt to blur this bright line distinction between issue advocacy on the one side that is vital to petition your government, to lobbying, to holding incumbents accountable for their votes, and active electioneering by adopting what amounts to the *Furgatch* test of the Ninth Circuit, and I believe that that is an incorrect reading of the Supreme Court's decision of *MCFL*. As the court in *Maine* decided on February 13 regarding a Federal Election Commission effort to use this test, it is unconstitutional.

Fourth, independent expenditures, which include express advocacy, are also entitled to the highest form of constitutional protection. Therefore, independent expenditure limits have been struck down, as have proposals such as those made by Public Citizen and Common Cause and in the House bill that would penalize independent expenditures by raising expenditure limits or providing benefits to the alleged victims of these independent expenditures. The case in the Eighth Circuit in

1994, where I represented plaintiffs, *Day v. Holohan*, established that proposition.

Fifth, the prohibition on corporate independent expenditures are not applicable to certain not-for-profit corporations, organizations such as the MCFL.

Senator MCCONNELL. Mr. Bopp, if you could kind of wrap it up, I would really appreciate it.

Mr. BOPP. I will.

Senator MCCONNELL. I know you have been waiting a long time and I apologize that the hearing has been so long.

Mr. BOPP. I will, indeed. Organizations such as MCFL cannot be prohibited from independent expenditures.

Sixth, organizations may not be considered to be a political committee unless their major purpose is for the nomination or election of candidates.

Seventh, a political freedom of association is equally protected with political speech and therefore PAC's may not be either abolished or treated discriminatorially.

And finally, that no prior restraint on political speech is allowed, particularly the loss of First Amendment freedoms, because they are irreparable and the timing is critical. Of course, the bills before you would give the authority for the Federal Election Commission to seek injunctions or prior restraints of speech.

In all these respects, with respect to these principles, the two bills before you seek to penalize and restrict speech rather than enhance it and I think run afoul of these First Amendment protected rights.

[The prepared statement of Mr. Bopp follows:]

PREPARED STATEMENT OF JAMES BOPP, JR., FREE SPEECH COALITION, INC.,
WASHINGTON, DC

I am James Bopp, Jr., attorney at law, and I appreciate the opportunity to testify before this committee. Today I am appearing on behalf of one of our most interesting clients—the Free Speech Coalition. The coalition was formed in 1993, by liberal, conservative, and non-ideological advocacy groups, to give voice to the growing concern of issue advocacy groups that federal and state governments have over-regulated and stifled citizens' free speech rights. The Free Speech Coalition is a diverse group of over 50 nonprofits from the American Conservative Union to the Fund for the Feminist Majority; from the National Rifle Association and Gun Owners of America to the Coalition to Stop Gun Violence and the Committee Against Hand Gun Violence; from abortion rights advocacy groups to the client I serve as General Counsel, the National Right to Life Committee.

In this testimony, the Free Speech Coalition joins me regarding the need to minimize the federal regulatory burden on those who want to participate in the American political process, and, in particular, provisions in proposed laws which restrict the ability of nonprofit groups to speak on behalf of their members regarding issues of public concern. It also opposes expanded powers for the Federal Election Commission to threaten such freedom with preemptive injunctions.

The Coalition has sought to oppose state and federal agencies which exceed their statutory mandates, and infringe upon the constitutional rights of the citizens they were formed to serve. Most of its work has been in the area of protecting the freedom of the American people to work through social welfare

groups to lobby their elected officials without undue burdens being placed upon them.

As a constitutional attorney heavily involved in election law, I have broad experience in the constitutional aspects of election law and in the approach to free expression and association rights taken by the Federal Election Commission. I have served as lead counsel in numerous election law cases and authored many *amicus curiae* briefs in election law cases.

My testimony will focus on the need to protect constitutionally-guaranteed free expression and will emphasize three key points, which may be summarized as follows:

- (1) robust issue advocacy must be protected by a bright-line test to distinguish issue advocacy from the express advocacy of the election or defeat of a clearly identified candidate,
- (2) prior restraints must be avoided, and
- (3) the power of the Federal Election Commission must be narrowly circumscribed.

I. Issue Advocacy Must Be Protected.

In proposals for campaign finance reform and efforts by the FEC to regulate elections, the strong First Amendment protection afforded issue advocacy is often ignored. This does not square with the history of strong protection of issue advocacy by the courts.

A. The First Amendment Protects Issue Advocacy Against Any Infringement.

In a series of cases, the United States Supreme Court has drawn a distinction between electioneering, which may be regulated, and other expressions of free speech, including issue advocacy, which enjoy full First Amendment protection. In order to constitute electioneering, as distinguished from issue advocacy, the United States Supreme Court has adopted a bright-line test—that the communication must “in express terms advocate the election or defeat of a clearly identified candidate for a public office.” *Buckley v. Valeo*, 424 U.S. 1, 44 (1976) (*per curiam*).

The Supreme Court has long and carefully watched over efforts to regulate political speech in order to ensure that the guarantees of the First Amendment are not denied. This is because such restrictions “limit political expression ‘at the core of our electoral process and of First Amendment freedoms.’” *Buckley*, 424 U.S. at 39 (quoting *Williams v. Rhodes*, 393 U.S. 23, 32 (1968)). Not only has the Court afforded strong constitutional protection for political speech in general—including the right to urge the election or defeat of a candidate—but it has afforded exceptionally strong constitutional protection for issue-oriented speech in particular. As a result, the Court has repeatedly given a narrowing construction to statutes regulating political speech so as to permit prohibition or restriction of only express advocacy, in order to shield the statutes from constitutional attack.

In 1948, the Supreme Court considered the case of *United States v. Congress of Industrial Organizations*, 335 U.S. 106 (1948) (“C.I.O.”). C.I.O. concerned a federal statute prohibiting a corporation or labor organization from making “any expenditure in connection with a federal election.” *Id.* at 106–107 n.1. Under this provision, an indictment was returned against the C.I.O. and its president for publishing, in *The CIO News*, a statement urging all members of the C.I.O. to vote for a particular candidate for Congress in an upcoming election. *Id.* at 108. In affirming a dismissal of the indictment, the Court observed:

If § 313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubt would arise in our minds as to its constitutionality.

Id. at 121.

A lengthy footnote appended to this statement set forth several passages from case law wherein the Court had declared the specially protected nature of free speech concerning public policy and political matters:

Free discussion of the problems of society is a cardinal principle of Americanism—a principle which all are zealous to preserve. *Pennekamp v. Florida*, 328 U.S. 331, 346 [(1946)].

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. *Thomas v. Collins*, 323 U.S. 516, 529-30 [(1945)].

For the First Amendment does not speak equivocally. It prohibits any law "abridging the freedom of speech, or of the press." It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow. *Bridges v. California*, 314 U.S. 252, 263 [(1941)].

C.I.O., 335 U.S. at 121-22 n.21.

In 1976, the Supreme Court considered a successor statute to the one discussed in C.I.O., The Federal Election Campaign Act of 1971, as amended in 1974. 2 U.S.C. § 431 *et seq.* This new statute was reviewed in *Buckley v. Valeo*, 424 U.S. 1. *Buckley* dealt, inter alia, with a provision which limited "any expenditure . . . relative to a clearly identified candidate." *Buckley*, 424 U.S. at 41 (quoting 2 U.S.C. § 608(e)(1)). The provision placed a limit on the amount of an independent expenditure on behalf of a candidate. However, this provision was considered to be unconstitutionally vague. *Buckley*, 424 U.S. at 41. Therefore, the Court construed it with another provision of the same statute to require "'relative to' a candidate to be read to mean 'advocating the election or defeat of' a candidate." *Id.* at 42.

However, as the *Buckley* Court noted, this construction merely refocused the vagueness problem. The real problem, the Court noted, is that:

the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are often intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

Id. at 42.

Because of the problem described, the Supreme Court settled on the "express advocacy" test set forth in *Buckley* as marking the line of demarcation between the permitted and the forbidden. This test is constitutionally mandated because only a statute prohibiting the express advocacy of a clearly identified federal candidate has a sufficiently bright line of distinction to make it constitutionally defensible. The Supreme Court, in *Buckley*, explained the problem with a quotation from *Thomas v. Collins*, 323 U.S. 516, 535 (1945):

[W]hether words intended and designed to fall short of invitation would miss the mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.

Buckley, 424 U.S. at 43.

Thus, the Supreme Court, in *Buckley*, said that:

[t]he constitutional deficiencies described in *Thomas v. Collins* can be avoided only by reading § 608(e)(1) [placing a ceiling on independent expenditures] as limited to communications that include explicit words of advocacy of election or defeat of a candidate.

Id.

Without such a clear line of demarcation, then, a speaker is forced to "hedge and trim" comments made on issues of public importance for fear he will be charged with forbidden electioneering. This is too heavy a burden on First Amendment Rights to be constitutionally permitted. It is noteworthy that, even as so narrowed, the ceiling on independent expenditures at issue in *Buckley* was struck down as not justified by a sufficiently compelling interest. *Id.* at 45. Such is the strength of the First Amendment protection of free expression.

The *Buckley* Court concluded that "[t]he constitutional deficiencies" of such unclear statutory language could only be cured by reading the statute "to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for a public office." *Id.* at 44. The Court added that "[t]his construction would restrict the application of §608(e)(1) to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Id.* at 44 n.52.

The *Buckley* Court proceeded to determine whether the statute, "even as thus narrowly and explicitly construed, impermissibly burdens the constitutional right of free expression." *Id.* at 44. The Court determined that the government could not advance an interest in support of the statute sufficient to "satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." *Id.* at 44-45. The *Buckley* Court expanded on the subject of the First Amendment's powerful protection of political speech:

[T]he First Amendment right to "'speak one's mind . . . on all public institutions'" includes the right to engage in "'vigorous advocacy' no less than "'abstract discussion.'" Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.

Id. at 48 (citations omitted) (ellipsis in original).

The *Buckley* Court also quoted approvingly the comments of the United States Court of Appeals for the District of Columbia, which it affirmed:

Public discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections.

Id. at 42 n.50 (quoting 171 U.S. App. D.C. 172, 226, 519 F.2d 821, 875 (D.C. Cir. 1975)).

In *American Federation of State, County and Municipal Employees ("AFSCME")*, 471 F. Supp. 315 (D.D.C. 1979), the District of Columbia district court rejected the FEC's contention that a poster qualified as express advocacy on the basis that it contained a clearly identified candidate, "may have tended to influence voting," and "contain[ed] communication on a public issue widely debated during the campaign." *Id.* at 317. The district court held that this was issue advocacy, not express advocacy, because it contained no express words urging the election or defeat of a clearly identified candidate.

This theme of the strong First Amendment protection afforded issue advocacy was adopted by the United States Court of Appeals for the Second Circuit in *FEC v. Central Long Island Tax Reform Immediately Committee ("CLITRIM")*, 616 F.2d 45 (2d Cir. 1980) (en banc) (per curiam). The *CLITRIM* case dealt with whether an

organization's failure to report funds expended to publish and distribute a leaflet advocating lower taxes and smaller government violated two statutory provisions. The first provision required "any 'person . . . who makes contributions or independent expenditures expressly advocating the election or defeat of a clearly identified candidate'" in excess of one hundred dollars to file a report with the FEC. *CLITRIM*, 616 F.2d at 52 (quoting 2 U.S.C. § 434(e)) (emphasis supplied by court). The second provision required "any person who 'makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate' . . . through media, advertising or mailing to state whether the communication is authorized by a candidate" *Id.* (quoting 2 U.S.C. § 441d) (emphasis supplied by court).

The *CLITRIM* court noted "the broad protection to be given political expression," *id.* at 53, as indicated by the Supreme Court in *Buckley*, and observed that [t]he language quoted from the statutes was incorporated by Congress in the 1976 FECA amendments to conform the statute to the Supreme Court's holding in *Buckley v. Valeo* that speech not by a candidate or political committee could be regulated only to the extent that the communications "expressly advocate the election or defeat of a clearly identified candidate."

Id. (citations omitted). The court further observed that limiting the statutes to reach only express advocacy "is consistent with the firmly established principle that the right to speak out at election time is one of the most zealously protected under the Constitution." *Id.* (citations omitted).

The *CLITRIM* court held that

[t]he history of §§ 434(e) and 441d thus clearly establish that, contrary to the position of the FEC, the words "expressly advocating" mean[] exactly what they say. The FEC, to support its position, argues that "[t]he *TRIM* bulletins at issue here were not disseminated for such a limited purpose" as merely informing the public about the voting record of a government official. Rather the purpose was to unseat "big spenders." Thus, the *FEC* would apparently have us read "expressly advocating the election or defeat" to mean for the purpose, express or implied, of encouraging election or defeat. This would, by statutory interpretation, nullify the change in the statute ordered in *Buckley v. Valeo* and adopted by Congress in the 1976 amendments. The position is totally meritless.

Id. (citations omitted) (emphasis in original).

In 1986, the Supreme Court again considered the constitutional protection afforded issue advocacy, in the case of *FEC v. Massachusetts Citizens for Life* ("MCFL"), 479 U.S. 238 (1986). In *MCFL*, the Supreme Court considered the contention of Massachusetts Citizens for Life, Inc. "that the definition of an expenditure under § 441b necessarily incorporates the requirement that a communication 'expressly advocate' the election of candidates," relying on *Buckley*. *MCFL*, 479 U.S. at 248.

The *MCFL* Court held that this rationale must be extended to restrictions on independent expenditures. *MCFL*, 479 U.S. at 249. The Court said that if a ceiling on independent expenditures, at issue in *Buckley*, had to be construed to apply only to express advocacy of the election or defeat of a clearly identified candidate (in order to eliminate the constitutional deficiencies described in *Buckley*), "this rationale requires a similar construction of the more intrusive provision [at issue in *MCFL*] that directly regulates independent spending." *MCFL*, 479 U.S. at 249.

In *Faucher v. FEC*, 928 F.2d 468 (1st Cir. 1991), *cert. denied sub nom. FEC v. Keefer*, 112 S. Ct. 79 (1991), the First Circuit struck down the Federal Election Commission's regulations of voter guides which constituted issue advocacy as being beyond the authority of the FEC under 2 U.S.C. § 441b as interpreted by this Court in *MCFL*. The regulation at issue, 11 C.F.R. § 114.4(b)(5), required that a voter guide be "nonpartisan," which the FEC defined by six factors which may be considered in determining whether a voter guide is nonpartisan. The factors included consideration of whether a question is worded in a way that supports the position of a candidate on the issue covered and whether an editorial position

on the survey questions, or an expression of support for or opposition to any candidate, is included in the voter guide. 11 C.F.R. § 114.4(b)(5)(I)(A)-(F).

The United States District Court for the District of Maine struck the regulations down for trespassing upon constitutionally protected issue advocacy and for reaching beyond the authority of the Federal Election Commission. *Faucher*, 743 F. Supp. 64 (D. Me. 1990). The First Circuit affirmed the decision of the District Court. *Faucher*, 928 F.2d 468, declaring that "[t]he first amendment lies at the heart of our most cherished and protected freedoms. Among those freedoms is the right to engage in issue-oriented political speech." *Id.*

In *FEC v. Survival Education Fund*, 1994 U.S. Dist. Lexis 210 (S.D.N.Y. 1994), *aff'd* in part and *rev'd* in part, 65 F.3d 285 (2d Cir. 1995), the Second Circuit again rejected an FEC attempt to broaden the express advocacy test of *Buckley* and *MCFL*. The case involved letters hostile to President Reagan, which were sent out four months before the election, and contained no disclaimer (stating who paid for the mailing and whether it was authorized by any candidate). The FEC argued that the letters constituted express advocacy, but the Second Circuit pointed to the "express words" formula in *Buckley* and held that:

It is clear from the cases that expressions of hostility to the positions of an official, implying that that official should not be reelected—even when the implication is quite clear—do not constitute the express advocacy which runs afoul of the statute. Obviously, the courts are not giving a broad reading to this statute.

Id. at 4.

In *FEC v. Christian Action Network*, 894 F. Supp. 946 (W.D.Va. 1995), a Virginia district court considered advertisements run during the 1992 election campaign which the FEC considered to be express advocacy of the defeat of presidential candidate Clinton. Because the ads did not contain "explicit words or imagery advocating electoral action," the court held that they constituted protected issue advocacy and not electioneering. *Id.* at 948.

On February 13, 1996, the United States District Court for the District of Maine declared the latest regulations of the FEC seeking to define express advocacy (11 C.F.R. § 100.22) to be "invalid as not authorized by the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq., as interpreted by the United States Supreme Court in *Massachusetts Citizens for Life*, 479 U.S. 238, and by the United States Court of Appeals for the First Circuit in *Faucher*, 928 F.2d 468, because it extends beyond issue advocacy." *Maine Right to Life Committee v. FEC*, No. 95-261-B-H, slip op. at 12 (D. Me. Feb. 13, 1996) (opinion and order granting declaratory relief). The Maine District Court struck down a definition of "[e]xpressly advocating," *Id.* at 5, which "comes directly from" *Furgatch*. *Id.* at 7; *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987). The Maine District Court relied on the fact that, contrary to the Ninth Circuit's decision in *Furgatch*, the Supreme Court in *Buckley* and *MCFL* created a bright-line protection of issue advocacy, "even at the risk that it is used to elect or defeat a candidate." *Id.* at 10.

As may be seen, the Supreme Court and other courts have applied strict scrutiny to regulations impinging on pure issue advocacy, and no interest has ever been found sufficiently compelling to justify regulation of issue advocacy. The only interest which is sufficiently high to justify regulation of political speech—i.e., the avoidance of corruption or the appearance of corruption, see, e.g., *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 496 (1985)—has not been found compelling enough to justify burdening issue advocacy. By its nature, the advocacy of issues is not corrupting. As the Supreme Court said of political action committees in *National Conservative Political Action Committee* case:

The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by PAC's can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view.

FEC v. National Conservative Political Action Committee, 470 U.S. at 497. If this is true of PAC's, then a fortiori there can be no corruption or appearance of corruption resulting from issue advocacy by not for profit issue advocacy groups.

In sum, the Supreme Court has never recognized a compelling interest which would justify regulation of issue advocacy. Rather, it has held that the right to vigorously advocate issues is sacrosanct. Therefore, issue advocacy must be given a sufficiently wide berth to guarantee that advocacy groups and corporations will feel free to exercise their constitutional right of free speech. *Buckley*, 424 U.S. at 78; *CLITRIM*, 616 F.2d at 54-55 (Kaufman, Chief Judge, joined by Oakes, Circuit Judge, concurring). Moreover, where government regulates near to this sacrosanct area, it must employ the bright line of demarcation between the permissible and impermissible set forth in *Buckley* and *MCFL*.

B. Certain Campaign Proposals Fail to Protect Issue Advocacy.

1. S. 1219.

An example of a failure to protect issue advocacy with the bright-line test established in *Buckley* and *MCFL* is found in S. 1219. The problem is with the definition of independent expenditure in Sec. 251 of the bill.

The Act defines "independent expenditure" as an expenditure containing "express advocacy" made without the participation of a candidate. "Express advocacy" is defined extremely broadly:

18(A) The term "express advocacy" means when a communication is taken as a whole and with limited reference to external events, an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular party.

(B) The term "expression of support for or opposition to" includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action.

This extremely broad definition of "express advocacy" would sweep in protected issue advocacy, such as voter guides. For example, criticizing a candidate for his or her abortion stand near an election time would fall within the express advocacy definition because it would constitute "an expression of . . . opposition to a specific candidate." This phrase goes far beyond what the United States Supreme Court said was permissible to regulate as electioneering in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, the Supreme Court held that in order to protect issue advocacy (which is protected by the First Amendment), government may only regulate election activity where there are explicit words advocating the election or defeat of a clearly identified candidate.

2. H.R. 2566.

The same flaw is found in H.R. 2566, which defines "express advocacy" in the same broad terms in Section 251:

(18)(A) The term "express advocacy" means when a communication is taken as a whole and with limited reference to external events, an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular party.

(B) The term "expression of support for or opposition to" includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action.

II. As Part of Protecting Issue Advocacy, the "Major Purpose" Test Should Be Expressly Inserted into any New Laws Regulation Elections.

While the Free Speech Coalition has taken no official position on the incorporating the "major purpose" test into any proposed campaign law reform, I would personally propose that the test be added to any proposed legislation. The major purpose test was established in *Buckley v. Valeo*, 424 U.S. 1, and provides that an organization may not be required to register and do the extensive disclosure and reporting required of political committees unless election advocacy is the major purpose of the organization. Under the major purpose test, if an organization

without the major purpose of election advocacy engages in the express advocacy of the election or defeat of a clearly identified candidate, the organization may be required to simply report the expenditure for express advocacy.

The *Buckley* Court established the major purpose test to protect issue advocacy. It did so in the context of its consideration of

Section [2 U.S.C.] 434(e) [which] requires '[e]very person (other than a political committee or candidate) who makes contributions or expenditures' aggregating over \$100 in a calendar year 'other than by contribution to a political committee or candidate' to file a statement with the Commission. [footnote omitted] Unlike the other disclosure provisions, this section does not seek the contribution list of any association. Instead, it requires direct disclosure of what an individual or group contributes or spends.

Id. at 74-75. The Court continued:

In considering this provision we must apply the same strict standard of scrutiny, for the right of associational privacy developed in *NAACP v. Alabama* derives from the rights of the organization's members to advocate their personal points of view in the most effective way.

Id. at 75. The Supreme Court then considered some vagueness problems, which were problematic because of the impingement on issue advocacy:

When we attempt to define 'expenditure' Although the phrase, 'for the purpose of . . . influencing' an election or nomination, differs from the language used in § 608(e)(1), it shares the same potential for encompassing both issue discussion and advocacy of a political result. [footnote omitted] The general requirement that 'political committees' and candidates disclose their expenditures could raise similar vagueness problems, for 'political committee' is defined only in terms of amount of annual 'contributions' and 'expenditures,' [footnote omitted] and could be interpreted to reach groups engaged in purely issue discussion. . . . To fulfill the purposes of the Act they need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and 'political committees' so construed can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related.

Id. at 79 (emphasis added). The Court concluded:

But when the maker of the expenditure is not within these categories—when it is an individual other than a candidate or a group other than a 'political committee'—the relation of the information sought to the purposes of the Act may be too remote." To insure that the reach of § 434(e) is not impermissibly broad, we construe 'expenditure' for purposes of that section in the same way we construed the terms of § 608(e)—to reach only funds used for communications that expressly advocate [footnote omitted] the election or defeat of a clearly identified candidate." *Id.* at 79-80. [So construed, the reporting of indep. expends. is justified by the substantial governmental interest in "shed[ding] the light of publicity on spending that is unambiguously campaign related.

Id. at 81.

In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, the Court reiterated the major purpose. *MCFL*, 479 U.S. at 252 n.6; see also *id.* at 265 (O'Connor, J., concurring), which has also been followed by many lower courts. See, *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 391-92 (D.C. Cir. 1981)), cert. denied, 454 U.S. 897 . . . (1981); *United States v. National Comm. for Impeachment*, 469 F.2d 1134, 1141-42 (2d Cir. 1972) ("NCFI") (FECA applies only to committees soliciting contributions or making expenditures the major purpose of which is the nomination or election of candidates; "officials will be forced to glean the principal or major purpose of the organizations they seek to have comply with the act" *id.* at 1142); *American Civil Liberties Union v. Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), vacated on other grounds, 422 U.S. 1030 (1975)

(adopted major purpose test for FECA); *FEC v. GOPAC*, 871 F. Supp. 1466 (D.D.C. 1994) (holding that "the controlling relevant question is not whether the communication 'expressly advocates' the election or defeat of such candidates for federal office, but rather whether, at the times in question, the organization's 'major purpose . . . [was] the nomination or election' of an identified candidate or candidates for federal office." *Id.* at 1471 (issue was whether an organization was a political committee required to report and register under FECA); *FEC v. GOPAC*, 95 WL 99284 (D.D.C. Feb. 29, 1996) (order and memorandum granting summary judgment to GOPAC because it was not a political committee because its major purpose was not expressly advocating the election or defeat of a clearly identified candidate for federal office).

I. Prior Restraints Must Be Avoided.

The United States Supreme Court has long held prior restraints on free expression to be unconstitutional, except in such urgent cases as national security. The Supreme Court has stated that "[p]rior restraint upon speech suppresses the precise freedom which the First Amendment sought to protect against abridgment." *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 181 (1968). It has repeatedly recognized that "liberty of the press . . . has meant principally although not exclusively, immunity from previous restraints or censorship." *Near v. Minnesota*, 283 U.S. 697, 716 (1931). Indeed, the Supreme Court has stated that constitutionally permissible prior restraints on speech occur only in "exceptional cases." *Id.*

More recently, the Court has stated that: 1) any "system of prior restraints comes to this Court with a heavy presumption against its constitutional validity" and; 2) the Government carries a "heavy burden" to justify enforcing any system of prior restraint. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

Therefore, the Supreme Court has stated that a prior restraint resulting in a delay in publication "of even a day or two" may be intolerable when applied "to political speech in which the element of timeliness may be important." *Carroll*, 393 U.S. at 182. See also *Capital Cities Media, Inc. v. Toole*, 463 U.S. 1303, 1304 (1983) ("even a short-lived 'gag' order in a case of widespread concern to the community constitutes a substantial prior restraint and causes irreparable injury to First Amendment interests as long as it remains in effect"). Thus, the reluctance by the Supreme Court to impose prior restraints on speech exists in heightened form in the context of prior restraints on political speech.

Certain Campaign Proposals Authorize Prior Restraints.

S. 1219.

Despite the unconstitutionality of, and the serious erosion of liberty inherent in, prior restraints, S. 1219 authorizes a prior restraint of free expression. Section 306 authorizes an injunction where there is a "substantial likelihood that a violation . . . is . . . about to occur." Thus, the FEC would be authorized to seek injunctions against communication which, in the FEC's expansive view, could influence an election and which involve an alleged violation of the FECA. Such a preemptive action against speech is an unconstitutional prior restraint and is unconstitutional except in the case of national security or similarly weighty situations. Prior restraint should never be allowed in connection with core political speech. There simply is no governmental interest of sufficient magnitude to justify the government stopping persons from speaking. Because prior restraints of speech are so repugnant to the Constitution, the usual remedy is to impose penalties after the speech is done, if a violation of law occurred in connection with the speech.

If this provision were enacted, the Federal Election Commission would be authorized to pursue injunctions against the political speech of persons or organizations suspected of violating the Act. This means that nonprofit issue advocacy groups would be subject to a prior restraint of their speech, even issue advocacy, on the eve of an important election. Given its history of expansive readings of its powers to regulate constitutionally-protected speech, the Federal Election Commission should never be handed the weapon of prior restraint.

3. H.R. 2566.

In similar fashion, Section 314 of H.R. 2566 would amend Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 437g(a)) to authorize the FEC to seek an injunction where there is a "substantial likelihood that a violation . . . is . . . about to occur."

In addition to the constitutional problem of prior restraints, there is a practical problem based on the history of the FEC. The FEC has taken a very expansive view of what constitutes electioneering (which it may regulate) and a very narrow view of what constitutes issue advocacy. Given its history of expansive readings of its powers to regulate constitutionally-protected speech, the Federal Election Commission should never be handed the weapon of prior restraint.

II. FEC Powers Should Be Narrowly Circumscribed.

The central troubling feature of this history is the FEC's refusal to heed the instructions of the Supreme Court with regard to the constitutional mandate of bright-line protection for issue advocacy. While the Court clearly set out the broadly-applicable express advocacy test in *Buckley*, the FEC has consistently refused to limit itself to the express advocacy test unless legally compelled to do so. This has led to defeats for the FEC position in numerous cases, as noted above, where the FEC has sought to regulate issue advocacy.

In fact, the FEC's intransigence in complying with free expression rights led Chief Judge Kaufman of the Second Circuit to comment of the FEC, in *CLITRIM*, 616 F.2d at 53-54 (Kaufman, Chief Judge, concurring), that—

[T]he insensitivity to First Amendment values displayed by the Federal Election Commission (FEC) in proceeding against these defendants compels me to add a few words about what I perceive to be the disturbing legacy of the Federal Election Campaign Act (FECA), 2 U.S.C. §§ 431, et seq. . . . Indeed, before *Buckley v. Valeo*. . . the Supreme Court had emphasized that freedom to criticize public officials and oppose or support their continuation in office constitutes the "central meaning" of the First Amendment. . . . If speakers are not granted wide latitude to disseminate information without government interference, they will "steer far wider of the unlawful zone," . . . thereby depriving citizens of valuable opinions and information. This danger is especially acute when an official agency of government has been created to scrutinize the content of political expression, for such bureaucracies feed upon speech and almost ineluctably come to view unrestrained expression as a potential "evil" to be tamed, muzzled, or sterilized. . . . The possible inevitability of this institutional tendency, however, renders this abuse of power no less disturbing to those who cherish the First Amendment and the unfettered political process it guarantees. *Buckley v. Valeo*, supra, imposed upon the FEC the weighty, if not impossible, obligation to exercise its powers in a manner harmonious with a system of free expression. Our decision today should stand as an admonition to the Commission that, at least in this case, it has failed abysmally to meet this awesome responsibility.

This willingness to encroach on issue advocacy was evident in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), wherein the FEC insisted that the bright-line issue advocacy test of *Buckley* did not apply to expenditures for voter guides under 2 U.S.C. § 441b, which governs corporate expenditures "in connection with any election." The Supreme Court ruled that the bright-line express advocacy test did apply to this statutory provision, just as it applied to the provision considered in *Buckley*.

Astonishingly, the FEC did not then incorporate the bright-line express advocacy test in its enforcement of the FECA. Rather, the FEC argued that the reaffirmation of the express advocacy test in *MCFL* was a mere obiter dictum, not a holding, so that the FEC was not bound by it. The First Circuit rejected this argument in *Faucher v. FEC*, 928 F.2d 468 (1st Cir. 1991), cert. denied sub nom. *FEC v. Keefer*, 112 S. Ct. 79 (1991), holding that the bright line express advocacy test of *Buckley* and *MCFL* did govern § 441b in order to protect issue advocacy done by nonprofit corporations in voter guides. This eventually forced the FEC

to issue new regulations defining express advocacy which were themselves an attempt to subvert the Court's express advocacy test.

Presently, litigation has once again been necessary to challenge the new FEC rules attempting to regulate issue advocacy as if it were express advocacy, an issue already decided in the *Faucher* case, on the basis of this Court's decisions in *Buckley* and *MCFL*. This despite the fact that *Buckley* was decided two decades ago and consistently followed by the Supreme Court when presented with opportunities to apply the express advocacy test.

Concomitant with the FEC's desire to regulate issue advocacy is its desire to reject the formulation of the Supreme Court for what constitutes the bright line between issue advocacy and electioneering. In *Buckley*, this Court construed the statute at issue there (in order to avoid constitutional difficulties) "to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for a public office." *Id.* at 44 (emphasis added). The Court added that "[t]his construction would restrict the application of § 608(e)(1) to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Id.* at 44 n.52 (emphasis added). It is clear from *Buckley* that a determination of whether a communication expressly advocates the election or defeat of a clearly identified candidate is to be made from the words of the communication itself.

In the case of *Colorado Republican Federal Campaign Committee v. FEC*, now before the United States Supreme Court on a writ of certiorari (No. 95-489), the FEC once again urges its totality-of-the-circumstances test. This test, adopted from language in the Ninth Circuit in the case of *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), cert. denied 484 U.S. 850 (1987), looks at the context of a communication to determine if the communication is electioneering. It is important to note that the *Furgatch* test was decided in, and is rightly applicable to, a very narrow context. *Furgatch* was about disclosure provisions. The *Furgatch* court noted this "Court's directive that, where First Amendment concerns are present, we must construe the words of the regulatory statute precisely and narrowly, only as far as is necessary to further the purposes of the Act." *Id.* at 861. The court then devoted a full page to discussing the importance of disclosure, the purposes served thereby, and the minimal burden imposed by disclosure. *Id.* at 862. Because it concluded that disclosure "serves an important Congressional policy and a very strong First Amendment interest," and because the burden imposed would be "minimally restrictive," the Ninth Circuit adopted a totality of the circumstances test. *Id.* Therefore, if *Furgatch* is good law at all, which is doubtful, it should be limited to its context.

However, the *Colorado Republican Federal Campaign Committee* case is not about the minimal burden of a disclosure requirement. It is about a prohibition on issue advocacy, such as the Supreme Court considered and rejected with regard to a cap on independent expenditures in *Buckley*, 424 U.S. at 45-46, and with regard to a bar on issue advocacy by corporations. *MCFL*, 479 U.S. 238. The FEC would take a rule created by the Ninth Circuit in the context of a minimal-burden disclosure situation and apply it across the board, even in the maximum-burden situation where speech is barred. That is too heavy a burden on the vital freedoms of expression and association to be constitutional.

This totality-of-the-circumstances test was proposed by the FEC in *Faucher* and rejected by the First Circuit. *Faucher v. FEC*, 928 F.2d 468. It has now been adopted by the Tenth Circuit in the *Colorado Republican Federal Campaign Committee* case where the expenditure is coordinated with a candidate. According to the Tenth Circuit, the line between issue advocacy and electioneering is not determined by express words of advocacy, but whether a reasonable person would believe that the communication tended to "diminish" public support for an opposing (unnominated) candidate and "garner support" for one's own possible (though not yet identified) candidate. *FEC v. Colorado Republican Federal Campaign Committee*, 59 F.3d 1015, 10 (1995). This determination may be made from a totality of the circumstances, not the express words of the communication itself.

The problem with this sort of test is simple: it forces issue advocates to hedge and trim lest the FEC decide, based on circumstances beyond the communication

itself (including even those outside the control of the communicator), to bring an enforcement action and seek to demonstrate an intent to electioneer. The bright-line, express advocacy test was imposed by the Supreme Court on the FEC precisely to prevent the burden on First Amendment rights resulting from such vagaries.

However, there is an important point which needs to be made in the context of this testimony focusing on issue advocacy. That point is that abandoning the bright-line approach to protecting issue advocacy will fuel the efforts of those who want to encroach on the right to engage in issue advocacy. Abandoning the bright-line rule of *Buckley* and *MCFL* will create a principle that will be built upon to limit vigorous issue advocacy, resulting in loss of First Amendment rights and ongoing litigation. The right of free expression about issues is of such paramount importance in our republic that no encroachment upon it must be permitted. To that end, a bright-line rule is essential.

Finally, a few other cases demonstrate the relentless efforts of the FEC to expand its regulatory powers. In *FEC v. National Organization for Women*, 713 F. Supp. 428 (D.D.C. 1989), the FEC brought an action against NOW charging that membership solicitation letters discussing issues of pay inequality, abortion, and equal rights constituted express advocacy. The letters at issue expressly criticized the Reagan Administration and the Republican Party. Included in the communication was the following phrase which the FEC found damning: "Politicians listen when they think an organized group of citizens can help elect or defeat them." Another letter criticized by name Senators Helms, Hatch, and Thurmond, and spoke of "a renewed effort now being launched by New Right reactionary groups in preparation for the 1984 elections," which phrase the FEC condemned as electioneering. A third letter made the case for the ERA and condemned President Reagan and named several senators "up for reelection in 1984" who "must be made to understand that failure to pass the ERA will result in powerful campaigns to defeat them." The trial court reviewed the Supreme Court's bright-line express advocacy test, noted that no express words advocating the election or defeat had been used, and granted summary judgment to NOW.

In the case of *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995), the Survival Education Fund, Inc. and the National Mobilization for Survival, Inc. were engaged in issue advocacy on environmental issues. Included in the mailing at issue was a letter from Dr. Benjamin Spock, in which he stated that "your special election-year contribution today will help us communicate your views to hundreds of thousands of members of the voting public, letting them know why Ronald Reagan and his anti-people policies must be stopped." The FEC considered this phrase to be express advocacy. Both the district court and the Second Circuit held that the phrase contained no express words advocating the election or defeat of a clearly identified candidate for federal office and so was protected issue advocacy.

Most recently, the case of *FEC v. GOPAC, Inc.*, 1996 WL 99284 (D.D.C. Feb. 29, 1996), amply demonstrates the FEC's refusal to recognize the constitutional protection afforded issue advocacy by the bright-line express advocacy test and the major purpose test which were created to protect issue advocacy. Despite the fact that GOPAC did not have as its major purpose expressly advocating the election or defeat of clearly identified federal candidates, the FEC pushed for a test that would make an organization a political committee if it "engages in 'partisan politics' or 'electoral activity.'" The court rejected this approach and granted GOPAC summary judgment because the test proposed was not that of the Supreme Court in *Buckley*.

These cases amply demonstrate why the FEC should not be granted additional powers to regulate elections, especially the power to initiate proceedings to obtain prior restraints of free expression on the basis of the FEC's evaluation of whether a challenged communication constitutes a violation of federal law.

Senator MCCONNELL. Thank you, Mr. Bopp. Just summing up then, you think the measure, S. 1219, is wholly unconstitutional in a variety of different ways?

Mr. BOPP. In a variety of different ways, but principally because it seeks as a mechanism to equalize speech the suppression or penalty on speech rather than what I think the Congress could do, and I would propose that it do, that is enhance the speech of citizens in order to equalize speech.

Senator MCCONNELL. And your other point, that if Congress and the President were to sign into law something like this, it is going to cost a lot of money by citizens' groups to go to court to make the obvious occur, which is to replace this monstrosity with something that is constitutional. I gather that would also be a considerable inconvenience to those who are aggrieved by this, should we put this into law.

Mr. BOPP. It would also chill speech during the period of time that the litigation occurs, and if the Congress is seriously considering passing what is patently unconstitutional, such as the abolishment of all PAC's, for instance, they also ought to provide a provision that allows the recovery of attorneys' fees against the U.S. Government for those not-for-profits that have to litigate to protect the First Amendment rights, as Congress has done for States.

Senator MCCONNELL. That is a very good point.

Ms. DeVries, thank you very much for being here. It is good to see you again. You were here earlier when one of our witnesses was trying to describe what is a public interest as opposed to a special interest, as if one group is more worthy and therefore is entitled to some kind of preferred position under the First Amendment. I gather that you would not view the American Nurses Association as a group that is somehow entitled to fewer rights or is less worthy than some group that may choose to describe itself as a public interest group.

Ms. DEVRIES. No, sir, not at all. I think there is always, as we all know, two sides to every point. We have also heard a lot of arguments today about women's groups and where women's groups should stand. As I said, we are predominately a female profession, 96.8 percent. We feel like our PAC has helped elect a lot of women candidates. We do not endorse them strictly on a gender basis but we do look for candidates that, if they are equally qualified, then perhaps we will give the nod to them.

I think that PAC's have helped to advocate some of those things that they, women's groups, choose to protect by abolishing PAC's; so I think that there are always two ways to look at everything, as is the same question that you asked about special interest groups versus public interest.

Senator MCCONNELL. So I think it is safe to say that you do not think abolishing the American Nurses Association PAC is a good government thing to do.

Ms. DEVRIES. No, sir.

Senator MCCONNELL. Mr. Dye, just one observation. You did not touch on the postal subsidy in this bill and I was curious as to whether—as you know, under the McCain-Feingold-Wellstone

proposal, if a candidate chooses to accept the limitation on his speech in the campaign, in addition to getting a 50 percent discount on television, he also gets a substantially reduced direct mail subsidy. The bill is silent on sort of who pays for that. Whether it ends up being paid for by the ratepayers or the taxpayers is not real clear.

To the extent that it ended up being paid for by the ratepayers, could that have the effect of making the Postal Service less competitive with its competitors?

Mr. DYE. Yes, I think so. I cannot see passing that expense on to our ratepayers. I do not feel that we can support this H.R. 2556 or the abolition of PAC's.

Senator MCCONNELL. It would have to be paid for by someone and it is silent on that. My assumption is it would either be paid for out of the Treasury of the United States directly or by the people to whom you deliver mail directly. I just wanted to touch on that as another potentially offensive part of this from your organization's point of view.

Mr. DYE. I really do not have any response to that. I do not want to see it passed on to our customers.

Senator MCCONNELL. All right. Senator Ford?

Senator FORD. I have never heard anything that was not any good at all. There is bound to be something in both these bills that you can find that would be good. I just want to get something. I have not heard a good thing about either one of them today. Maybe we will have a different hearing next time.

Mr. Dye, if PAC contributions were limited to \$1,000 per candidate, would that affect your PAC significantly?

Mr. DYE. Yes, I think it would. I think it would limit my ability to communicate my views and my interests to my representatives.

Senator FORD. How many contributions do you make in a political year that are over \$1,000?

Mr. DYE. I make very few over \$1,000, sir.

Senator FORD. I am just saying, do you give any \$5,000 contributions?

Mr. DYE. No, sir, I do not, but I do give to PAC's.

Senator FORD. I understand, but what I am saying is your PAC, when you write a check out to John Doe or John Warner or whatever, do you give him more than \$1,000? How many candidates have you given more than \$1,000 to, to your knowledge?

Mr. DYE. I do not have that information.

Senator FORD. Not many, I do not imagine.

Mr. DYE. I am sure we do not.

Senator FORD. What I am saying is if you limit it to \$1,000, most of the PAC's, or a lot of them, would not be disturbed in their financial contribution to candidates.

You mention in your statement that PAC members become interested in the political system because they have an interest

in it through their contribution to the PAC. Does your PAC promote a political education program for its members? Do you all get into that at all?

Mr. DYE. We educate our members through our magazine, through our newsletter, as to what is happening on Capitol Hill that concerns the Postal Service and rural letter carriers in general, and that way we do educate them.

Senator FORD. My colleague raised a good question about subsidizing political campaigns through the mail. I am not sure I am right, but I think that one statement was made in one of the earlier panels, maybe it was the first one, that the rate would be no different than the charitable rate.

I am not sure that if you accept the charitable rate now, you surely will not lose money on every deal. You depend on volume to get by. I have heard that several times. But that charitable rate at least gives you some income. We are not cutting 50 percent of the charitable rate. The charitable rate is a break that everybody gets and this bill just gives those who basically are challengers an opportunity.

Ms. DeVries, if PAC's were banned as contributors in Federal elections, do you think your PAC at that point—this is a hypothetical. I do not think PAC's are going out of business, one. Two, I think they may limit the amount that they can give. But just say if they go out, would you provide political education activities to encourage participation in the political system? Would you continue to do other things rather than give a check to a candidate?

Ms. DEVRIES. Yes, sir. Within the American Nurses Association, we have segregated funds for our PAC but it is a structural part, or arm, of the American Nurses Association. The American Nurses Association has several areas for the education of our nurses in political activities. We have several acronyms for the different national, state and grassroots programs, but basically, we do involve or attempt to educate the nurses in the political process through the American Nurses Association.

The PAC is a tool that we use, because as we make a contribution, and in answer to some of the questions you asked Mr. Dye, the American Nurses Association in the 1993-94 political years, raised \$1.2 million. One-point-zero-eight percent of that \$1 million was expended in direct contributions to candidates. Most of them were given in \$200 to \$300 contributions. Rarely did we give a \$1,000 contribution.

So it is a tool. As we made a contribution to a candidate, the nurses in that area made that contribution. They went to that area, to that Congressional district. They made the contribution, not the American Nurses Association's Political Action Committee here from Washington. That, in itself, was an education tool. So we do attempt to use our PAC as an education tool but would continue to educate through other means.

Senator FORD. You could still raise the funds if you kept the interest up, and you would use those funds, rather than making the contribution as a PAC, you would make it as an educational program for your membership.

Mr. Bopp, you said earlier, I believe, if you were asked, you could give us eight or nine different ways that we could improve the political system and make some limits. Is there any way you might submit to this committee those eight or nine different ways?

I would appreciate if you would, and you could do it then in more detail and we could have it and refer to it rather than have to go back and pull it out of the record, which sometimes is not printed because we are trying to save money around here. This is the way I get around that. Barnum said there is a sucker born every minute who has those two people looking for him. But if you would do that, I would be grateful to you.

Mr. BOPP. If allowed by the chair to supplement my written testimony, I would be happy to do that for you.

Senator FORD. There is no objection to that.

Senator MCCONNELL. No. We are going to keep the record open for 10 days, so if you could get that in, we would appreciate it.

[Materials submitted by Mr. Bopp are included in Materials Submitted for the Record.]

Mr. BOPP. Thank you.

Senator FORD. I have no further questions, Mr. Chairman.

Senator MCCONNELL. Also, I am going to ask that Senator Warner's full statement be put in the record.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF HON. JOHN WARNER, CHAIRMAN, A U.S.
SENATOR FROM THE STATE OF VIRGINIA

Good morning. Today the Committee is holding the second in a series of hearings on campaign finance reform.

As we noted at our first hearing, campaign financing is a concern to many Americans, and the Senate is obligated to join in the examination and full discussion of this important issue.

This series is most appropriate. Literally, a day does not go by without a number of constituents contacting my office, and at least one article or editorial appearing in local and state newspapers covering campaign finance. In addition, this committee has received two additional legislative proposals for campaign finance reform, from McCain and Gorton, bringing the total number of proposals presently before this committee to six.

At our first hearing last month we heard from several Senators—McCain, Feingold, Thompson, Wellstone, Feinstein, and Bradley—about legislation they had proposed. We also heard from distinguished lawyers who raised serious concerns about the constitutionality of some of the proposed reforms. And we heard pros and cons for various aspects of campaign finance reform from prestigious policy institutes as well as advocate groups in favor of significant reform.

Today we have three members of the House—Messrs. Shays and Meehan, and Ms. Smith—who asked to testify on legislation they have introduced in the House.

They will be followed by two panels where we will hear from organizations and individuals on their perspective on the need for campaign finance reform.

It remains our sincerest hope that these hearings, along with the ongoing efforts of the private sector and educational institutions across our Nation, will help to inform senators on the costs and ramifications—favorable and unfavorable—of the legislative options that can be considered.

There are other issues remaining on this important subject—such as taxpayer financing, “soft money”, and the concept of free or reduced-fee broadcast time and postal service, and we hope to thoroughly cover them at our future hearings, with the next hearing scheduled for April 17.

I have limited my remarks this morning so that we might hear from our witnesses and I will ask all of our speakers to stick to our 5 minute limit on initial presentations. Any written statements they have will be submitted for the record.

Senator MCCONNELL. I want to thank all of you for coming and apologize for the lengthy delay. This hearing is concluded.

[Whereupon, at 1:00 p.m., the committee was adjourned.]

CAMPAIGN FINANCE REFORM

WEDNESDAY, MARCH 27, 1996

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 9:45 a.m., in Room SR-301, Russell Senate Office Building, Hon. John Warner, chairman, presiding.

Present: Senators Warner, McConnell and Feinstein.

Staff Present: Grayson Winterling, Staff Director; Bruce E. Kasold, Chief Counsel; Virginia C. Sandahl, Chief Clerk; Mary Louise Faunce, Administrative Assistant to the Staff Director; Kennie L. Gill, Democratic Staff Director and Chief Counsel; and John L. Sousa, Democratic General Counsel.

The CHAIRMAN. The Committee will come to order and I apologize for my tardiness. Today the Committee is holding its third hearing this year on campaign finance reform. This series of hearings is designed to permit the examination and full discussion of this very important subject. At our previous hearing, we heard from several senators, Senators McCain, Feingold, Thompson, Wellstone, Feinstein and Bradley about legislation they had proposed as well as from Members of the House, Members Shays, Meehan and Mrs. Smith, who testified on legislation they introduced from the House.

We also heard from distinguished lawyers who raised serious concerns about the constitutionality of some of the proposed reforms. And we heard pros and cons for various aspects of campaign finance reform from prestigious policy institutes, Cato Institute and Heritage Foundation, as well as general calls for significant reform by several advocate groups. At our last hearing, we also received testimony from organizations and individuals on their perspective of campaign finance proposals that would eliminate political action committees and the bundling of funds.

Further, we heard from one witness who suggested we limit the ability of organizations with mandatory membership from using membership dues to conduct partisan political activities. Today, we will continue the examination and discussion of campaign finance reform with our first panel focusing on the

suggestions that candidates for election be given reduced-fee postage. They will be followed by a panel of two scholars who will share their thoughts on the need for campaign finance reform.

Other issues still remain for discussion on this important subject such as the role of the political parties, taxpayer financing, soft money, and the concept of free and reduced-fee broadcast time. Further, we hope to thoroughly cover them at our future hearings, and the next hearing is now set for April 17. All right. I thank you very much. Senator.

Senator FEINSTEIN. Mr. Chairman, I just want to thank you and Senator Ford for convening this hearing, particularly on the subject of postal grants. Coming from a large state and knowing the cost of running statewide, reduced postage in exchange for voluntary spending limits to me seems to be the only way to go. I know there are different approaches on this Committee. One of the bills would have one mailing for each of the registered voters. My bill would have two mailings. It would take advantage of the lowest bulk rate, which is 12 cents, and currently, I believe, candidates have to spend 15 to 21 cents per piece of mail. In my state you literally cannot bulk mail statewide because of the cost. It becomes much more effective to use whatever kind of funds you have for television advertising. So I think this is a very important hearing, and I thank you for calling it.

The CHAIRMAN. Thank you, Senator. Senator McConnell.

Senator MCCONNELL. Thanks, Mr. Chairman. This is the most recent in a series of hearings that you have called on campaign finance reform. The bills that are getting the most attention, S. 1219 and S. 2566, are not only undemocratic and unconstitutional. They are also bureaucratic monstrosities. Each of these is reason enough to oppose the bill, but there is another, and that is the entitlement for politicians that is created in these bills. In exchange for complying with the speech limits, candidates would receive in the case of S. 1219 a half hour of free television time, a 50 percent broadcast discount, and a mail discount. These are very generous subsidies. Unfortunately, the sponsors of these reform bills have neglected to pony up and pay for them.

To head off criticism of taxpayer financing, which afflicted past efforts largely by the Democratic Party to pass these kinds of measures, the sponsors of the bills chose instead to dump the cost of the quote "benefits" entirely on broadcasters and the U.S. Postal Service. Never mind that the cost will ultimately be borne by consumers and rate payers, nearly all of whom are taxpayers.

President Clinton declared in his State of the Union speech 2 months ago that the era of big government is over. Four years ago, he declared that he wanted to end welfare as we know it. Sounds good. Yet the President has proposed creating a new entitlement program for politicians even more objectionable

than what is contained in S. 1219 and H.R. 2566. The only campaign finance proposal that President Clinton has put on the table during his administration includes taxpayer-funded communication vouchers for Senate candidates equal to one-fourth of the general election spending limit, 200,000 for each eligible House candidate in taxpayer dollars to counteract independent expenditures and taxpayer funds to counter excessive spending by non-complying candidates. All this taxpayer-funded largesse in addition to the half-price broadcast discount and mail discount.

S. 1219 and H.R. 2566 are not as outrageous as President Clinton's proposal, but they are not cheap either. These bills are not cost free. At a later date, we will also need to look into the cost of bureaucracy associated with these bills. Of course, the bureaucracy which would be required to enforce the speech limits will be paid for by the taxpayers. There are no free spending limits, not to the American people. In the end, Americans will be forced to pay for any spending limits bill either with their tax dollars, inflated postage stamps, or increased prices on consumer goods. There is no getting around it. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. You have a vast corporate knowledge of this subject going back over many, many years. And I respect that knowledge. We may have some modest differences, but I respect it.

The CHAIRMAN. Mr. Jeffrey Zelkowitz, Senior Attorney, Law Department, United States Postal Service; and Mr. Richard A. Barton, Senior Vice President for Congressional Relations, Direct Marketing Association.

Thank you very much, gentlemen, for joining us today.

Mr. Zelkowitz, will you kindly lead off?

TESTIMONY OF A PANEL CONSISTING OF JEFFREY ZELKOWITZ, SENIOR ATTORNEY, LAW DEPARTMENT, U.S. POSTAL SERVICE, WASHINGTON, DC; AND RICHARD A. BARTON, SENIOR VICE PRESIDENT FOR CONGRESSIONAL RELATIONS, DIRECT MARKETING ASSOCIATION, WASHINGTON, DC

Mr. ZELKOWITZ. Thank you, Mr. Chairman and members of the Committee. Again, my name is Jeffrey Zelkowitz and I am a Senior Attorney with the U.S. Postal Service. The Postal Service is pleased to have this opportunity to present its concerns about reduced postage rate provisions included in several Senate campaign finance reform bills.

The CHAIRMAN. Now we are going to put your entire statement in the record, and you may, you know, summarize or extemporize as you feel most comfortable.

Mr. ZELKOWITZ. Thank you, Mr. Chairman.

The CHAIRMAN. And that will apply, Mr. Barton, to your testimony.

Mr. BARTON. Thank you.

Mr. ZELKOWITZ. Okay. To the best of our knowledge, there are four Senate bills containing reduced postage rate provisions, S. 46, S. 116, S. 1219 and S. 1389. Each bill provides for reduced postage rates for qualified candidates in a different way. S. 46, which was introduced by Senator Feingold, would provide for reduced postage rates for both eligible House and Senate candidates. S. 116, S. 1219, and S. 1389, which were introduced by Senators Wellstone, McCain and Feinstein, respectively, would provide reduced postage rates only for eligible Senate candidates.

It is understandable that the sponsors of these campaign finance reform bills seek to create incentives to encourage candidates to accept the—

The CHAIRMAN. I am going to ask you to draw that microphone up very tightly.

Mr. ZELKOWITZ. Sure.

The CHAIRMAN. There are many in the back that want to hear every word you have there.

Mr. ZELKOWITZ. As I was saying, it is understandable that the sponsors of these campaign finance reform bills seek to create incentives to encourage candidates to accept the reforms contained in this legislation. Unfortunately, the offer of reduced postage rates is neither simple to administer nor without significant financial risk to the Postal Service.

Substantial and costly logistical problems are raised by the reduced postage provisions. Creating a smooth postal process for candidates who apply for these rates may be difficult. Some independent means of certifying a candidate as eligible must be developed so that postal employees do not have this responsibility. It is uncertain to us what types of documentation should accompany such an application. Moreover, there may be disputes over who is considered an eligible candidate under the bills. Limiting those who may be considered to be a candidate could present both legal and administrative problems.

For example, legal questions may be raised if eligible candidates are limited to persons whose names appear on the ballot. In addition, it will take some time to process these applications, and this lag time may be problematic for some candidates. It is also unclear how candidates could be easily and automatically removed from eligibility once an election is over. Solutions must be found to address these and other administrative problems before this legislation could be implemented.

Monitoring the appropriate use of reduced rates presents other logistical problems. All four Senate bills establish volume limitations based in part upon the voting age population. It is unclear how to monitor the number of pieces a candidate sends

at the reduced rates. Particularly if a mailing is sent from different localities in the state or from other states or is mailed at different times, it would be difficult to determine when the limit is reached. If a candidate decides to send a mailing in conjunction with another qualified political committee, monitoring becomes even more difficult.

Nothing in the legislation restricts the content that a qualified candidate can mail, for example, by requiring that only campaign material should be sent at the reduced rates. Adding such content restrictions to the legislation, however, would create legal, enforcement and administrative issues. From past experience, the Postal Service would expect administrative challenges to postal application of any content restrictions. Moreover, requiring postal personnel to examine mailings to ensure content restrictions are being followed would create significant delay.

Turning to another area of concern, we cannot estimate with precision how much these reduced postage rate provisions would cost. Estimates are difficult because the total depends on a number of variables such as the number of elections, the number of candidates in these elections, the population of states having elections, and how much the candidates would actually use the reduced rates.

We have made an educated guess based on the number of candidates who ran in 1994, which leads us to surmise that the potential liability could range from \$50 million to \$100 million per election, depending largely on the number of pieces that the candidate would be allowed to mail at the reduced rates. This figure does not include the cost to the Postal Service associated with setting up and administering the reduced postage rates for eligible candidates. It is also unclear for the reduced postage provisions what an election cycle means and what period of time it might cover. An expansive definition would escalate the cost of the reduced postage provisions.

A primary reason for our concern about cost is that the fiscal 1994 appropriations act for the Treasury Department and the Postal Service eliminated the funding mechanism to support reduced rates. This act also expressed the sense of the Congress that any adjustments after fiscal 1994 which would expand the classes of mail or kinds of mailers eligible for reduced postage rates should provide for sufficient funding to prevent losses to the Postal Service or increased rates for other classes of mail or kinds of mailers. Congress is currently reimbursing the Postal Service for a debt of over \$1 billion for past revenue forgone shortages. Since the revenue forgone funding mechanism is no longer available to handle expenses such as those that the reduced postage provisions would create, the Postal Service is particularly concerned that its customers not be placed at additional financial risk in any campaign reform initiative. In view of the highly competitive environment in which the Postal

Service must operate, we are making every effort to generate revenue and avoid costs unnecessary to mail delivery.

In summary, the Postal Service is concerned about the financial, legal and administrative issues raised by the reduced postage rate provisions in these campaign finance reform measures. We appreciate the opportunity to comment on this legislation.

This concludes my statement, and I would be happy to answer any of your questions.

[The prepared statement of Mr. Zelkowitz follows:]

PREPARED STATEMENT OF JEFFREY ZELKOWITZ, SENIOR ATTORNEY, LAW
DEPARTMENT, U.S. POSTAL SERVICE, WASHINGTON, DC

Mr. Chairman and Members of the Committee, my name is Jeffrey Zelkowitz and I am a Senior Attorney with the Law Department of the United States Postal Service. The Postal Service is pleased to have this opportunity to present its concerns about reduced postage rate provisions included in several Senate Campaign Finance Reform bills. To the best of our knowledge, four Senate bills contain such provisions: S. 46, S. 116, S. 1219, and S. 1389. Each bill would provide for reduced postage rates for qualified candidates in a different way.

S. 46, introduced by Senator Feingold, would provide for reduced postage rates for both eligible House and Senate candidates. The reduced rate would apply only to the "general election period", and would be available for "that number of pieces of mail equal to the number of individuals in the voting age population . . . of the congressional district or State, whichever is applicable."

Senator Wellstone's bill, S. 116, would provide reduced postage rates only for eligible Senate candidates. Like S. 46, the reduced rates would apply only to the "general election period." This rate would be available for "that number of pieces of mail equal to the number of individuals in the voting age population . . . of the state."

S. 1219 was introduced by Senator McCain, and would provide reduced postage rates for eligible Senate candidates. The reduced rate would be available for "that number of pieces of mail equal to 2 times the number of individuals in the voting age population...of the state." The amendments apply to "the general elections occurring after December 31, 1996 (and the election cycles relating thereto)."

Finally, S. 1389, introduced by Senator Feinstein, also would provide reduced postage rates for eligible Senate candidates. Like S. 1219, the reduced rate would be available for "that number of pieces of mail equal to two times the number of individuals in the voting age population . . . of the State." The amendments apply to "the general elections occurring after December 31, 1995 (and the election cycles relating thereto)."

It is understandable that the sponsors of these campaign finance reform bills seek to create incentives to encourage candidates to accept the reforms contained in this legislation. Unfortunately, the offer of reduced postage rates is neither simple to administer nor without significant financial risk to the Postal Service.

Substantial and costly logistical problems are raised by the reduced postage provisions. Creating a smooth postal process for candidates who apply for these rates may be difficult. Some independent means of certifying a candidate as eligible must be developed, so that postal employees do not have this responsibility. It is uncertain what type of documentation should accompany such an application. Moreover, there may be disputes over who is considered an eligible candidate under the legislation. Limiting those who may be considered to be a candidate could present both legal and administrative problems. For example, legal questions may be raised if eligible candidates are limited to persons whose names appear on a ballot. In addition, it will take some time to process these applications, and this "lag time" may prove problematic for some candidates. It is also unclear how candidates could be easily and automatically removed from

eligibility once an election is over. Solutions must be found to address these and other administrative problems before the legislation could be implemented.

Monitoring the appropriate use of a reduced rate presents other logistical costs and problems. All four Senate bills establish volume limitations based in part upon the voting age population. It is unclear how to monitor the number of pieces a candidate sends at the reduced rate. Especially if a mailing is sent from different localities in the state, or from other states, or is mailed at different times, it would be most difficult to determine when that limit was reached. If a candidate decides to send a mailing in conjunction with another qualified political committee, monitoring becomes even more difficult.

Nothing in the legislation restricts the content that a qualified candidate can mail, for example, by requiring that only campaign material shall be sent at the reduced rate. Adding such content restrictions to the legislation, however, would create legal, enforcement, and administrative issues. From past experience, the Postal Service would expect administrative challenges to postal application of any content restrictions. Moreover, requiring postal personnel to examine mailings to ensure content restrictions are being followed would create significant delay.

Turning to another area of concern, we cannot estimate with precision how much these reduced postage rate provisions would cost. Estimates are difficult because the total depends on variables such as the number of elections and the number of candidates in those elections, the population of the states having elections, and how much the candidates would use the reduced rates. An educated guess based upon the number of candidates who ran in 1994, however, leads us to surmise that potential liability could range from \$50 to \$100 million per election, depending largely upon the number of pieces a candidate would be allowed to mail. This figure does not include the costs to the Postal Service associated with setting up and administering the reduced postage rate for eligible candidates. It is also unclear for the reduced postage provisions, what "election cycle" means, and what period of time it might cover. An expansive definition would escalate the cost of the reduced postage provisions.

A primary reason for the concern about cost is that the fiscal 1994 appropriations act for the Treasury Department and the Postal Service eliminated the funding mechanism to support reduced rates. This act also expressed the sense of the Congress that any adjustments after fiscal 1994 which would expand the classes of mail or kinds of mailers eligible for reduced postage rates should "provide for sufficient funding" to prevent losses to the Postal Service or increased rates for other classes of mail or kinds of mailers. Congress is currently reimbursing the Postal Service for a debt of over \$1 billion for past revenue forgone shortages. Since the revenue forgone funding mechanism is no longer available to handle expenses such as those that the reduced postage provisions would create, the Postal Service is particularly concerned that its customers not be placed at additional financial risk in any campaign reform initiative. In view of the highly competitive environment in which the Postal Service must operate, every effort is being made to generate revenue and avoid costs unnecessary to mail delivery.

In summary, the Postal Service is concerned about the financial, legal, and administrative issues raised by the reduced postage rate provisions in these campaign finance reform measures. We appreciate the opportunity to comment on this legislation. This concludes my statement. I would be pleased to answer any questions.

The CHAIRMAN. We will hear from Mr. Barton and then proceed with the questions.

TESTIMONY OF RICHARD A. BARTON, SENIOR VICE PRESIDENT FOR CONGRESSIONAL RELATIONS, DIRECT MARKETING ASSOCIATION, WASHINGTON, DC

Mr. BARTON. Mr. Chairman, Senator McConnell, Senator Feinstein, if I am sniffing a little bit, it is because our wonderful Virginia weather has turned on me and I think the pollen has started to come out today.

The CHAIRMAN. Along with the good comes the not so good.

Mr. BARTON. That is right.

The CHAIRMAN. But it is a beautiful day, you must admit.

Mr. BARTON. It is very nice. It is a real pleasure to be here to testify on this very important subject. The Direct Marketing Association is an international trade association based in the United States, of course, with approximately 3200 U.S. corporations who are involved in all forms of direct marketing, directly marketing products and services to the public including the mail. And, of course, as you may guess, the mail is our single most important medium that we use. And a healthy and viable Postal Service is absolutely essential to the conduct of our business and to the success of the business, and it is with concerns about that that we testify today.

We are now opposed to legislation, any of the bills in both the House and the Senate, that have any provisions for lower cost, and generally this translates to applying the nonprofit rate for candidates without providing for reimbursement to the Postal Service for the total cost of those mailings. USPS, believe it or not, is in a very competitive environment nowadays even if it does have a monopoly. It faces major competition, and it must be allowed to operate as a business as it is supposed to be, and that generally means that your cost of doing business should relate to the businesses and services you provide, and we feel very strongly in this and other areas that Congress has to avoid the temptation to load extraneous costs on the Postal Service regardless of how merited the services may be that is unrelated to its business function to provide efficient, cost effective mail delivery, and we really believe that the very life over the next 20 years of the Postal Service is at stake unless it can be able to operate as a business.

We are looking at both the House and the Senate bills, and in doing our calculations, we have actually come up with higher calculations than the Postal Service has put together, and we discussed it and we realize that the only differences are in some of the assumptions we put together, that the principles that we used are the same. We estimate that if both the House and Senate legislation apply to House and Senate candidates in both primaries and general elections, which is an assumption that we make, but it's not explicitly stated in any of the bills, that the cost could be as high as \$350 million to the Postal Service, which

would be the difference between the nonprofit rate for what we call an enhanced carrier route rate—we do not need to get into detail—and the regular rate, which has to be picked up. That difference has to be picked up somewhere, and if reimbursement is not provided for in the bills, then the mail user and the Postal Service will have to pick up that tab.

Now in itself this amount is not a huge amount when we compare it to a \$55 billion annual budget, but Congress has already over the past several years for various reasons siphoned off about \$14 billion out of postal coffers, causing rates to grow higher and faster than they would have under normal business circumstances, and we think that the principle is not a good one, and that we need to stop it now.

Another reason, which the Postal Service mentioned in their testimony, too, is that in 1993, we passed what for us was a major piece of legislation, the Revenue Forgone Reform Act of 1993, which got the Congress out of the business of funding nonprofit rates with a fairly complex piece of legislation, from our viewpoint, in which all of us had to share some of the pain—the regular rate mailers, the Postal Service and the nonprofits. But the point of that was that that bill provided within it a provision and in the report language that no new categories of nonprofit mail should be created unless, as was mentioned, full finding was provided for the creation of that category.

And finally we believe very firmly that this provision and all the proposed legislation is really public financing in a different and frankly more harmful guise. We feel that if you oppose public financing, then you should oppose this provision in the legislation because it is public financing in a different guise, and if you are in favor of public financing, then it should just be viewed straightforwardly and not funneled through the Postal Service.

With that statement, Mr. Chairman, that is all I have to say, and we want to thank you again for inviting us to testify, and we certainly would be happy to work with you all on this very important subject.

Thank you.

[The prepared statement of Mr. Barton follows:]

PREPARED STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT FOR CONGRESSIONAL RELATIONS, DIRECT MARKETING ASSOCIATION, WASHINGTON, DC

Mr. Chairman. Members of the Senate Rules Committee:

Thank you for inviting the Direct Marketing Association to testify on the important issue of campaign finance reform. Our interest in the proposals now pending in the Senate and the House is very specific: we are opposed to granting any special postal rate privileges for congressional candidates unless they are fully funded by the federal government. Therefore, we are opposed to all major legislation on campaign finance reform now pending before the two bodies. Any specific remarks will be on S. 1219 sponsored by Senator McCain and a number of co-sponsors and H.R. 2566 sponsored by Rep. Linda Smith and co-sponsors.

Both bills, as do other bills pending before the House and Senate, have provisions for low cost mail for candidates that would be harmful to the Postal Service and the nations mailers.

The Direct Marketing Association represents more than 3,600 corporations, 3,200 of which are U.S. companies, involved in all forms of marketing directly to the public. In the U.S., direct marketing represents over \$1.1 trillion annually in revenue and is responsible for the employment of over 19 million Americans. While our members sell their products and services through all media, the mail is still the most important way of reaching our customers. Therefore, a viable, efficient postal service is essential to the continued success and growth of direct marketing.

The concept of providing lower cost mailings to candidates for the House and Senate without reimbursing the Postal Service is a poor one for a number of reasons.

First, it would be harmful both to the Postal Service and to the mailers who would ultimately be required to pick up the tab in one way or another. While the Postal Service is indisputably a government agency, it receives no subsidies and it is under a unique mandate to operate as much as possible like a business as possible. It has an important product to sell and it is important to the survival of the Postal Service that it be able to price that product competitively.

This cannot be done if costs extraneous to the development and delivery of that product, the delivery of mail, are constantly added to the price of the product. That is a sure way to run a private company out of business and it is a sure way to cripple fatally the Postal Services ability to participate in an increasingly competitive market, even for its so-called "monopoly" products. If we value universal mail delivery, then we must constantly avoid the temptation to load the Postal Service with costs unrelated to its mission. Free or reduced mail, regardless of how desirable from a social policy viewpoint, falls in this category. If Congress wants to provide this service to candidates, then it should provide the funding to do so.

The definitions in the several pending bills make it very difficult to provide firm cost estimates. However, for illustrative purposes, we can make some conservative assumptions to come up a fair estimate of the cost of such legislation to the Postal Service and its customers. Using the McCain and Smith bills as a base, the cost to the Postal Service and to mailers could be higher than \$351 million over a 2-year election cycle if we assume that two series of mailings for both primary and general elections will be covered and more than \$287 million if only one series of mailings would be allowed for the two year full election cycle.

While \$351 million out of a \$55 billion per year postal budget may not seem like a lot, it is several steps in the wrong direction. Congress in the past several years has pulled more than \$14 billion from Postal Service coffers with little thought other than to use the Postal Service money to attempt to reduce the budget deficit. This has caused the Postal Service to raise rates higher and more quickly than prudent business management would have required, and it has added to the financial crunch causing many mailers to shift to other media to sell their products and services, thus weakening the Postal Service in its drive to survive in a competitive environment.

Another reason we oppose the pending legislation is that the provisions for lower cost mailings violate the stated intention of Congress when it passed the Revenue Forgone Reform Act of 1993. That legislation was a carefully wrought compromise arising out of the strong desire of Congress to get out of the business of funding subsidies for lower cost nonprofit mailings. We said then as we say now that if Congress mandates lower rates for certain types of mail, then it should pay for them. However, that did not appear to be a possibility in 1993, so a compromise was struck that essentially shared the pain among regular rate mailers, nonprofit mailers, and the Postal Service. Nonprofit mailers continued to have lower rates. This was done by requiring nonprofit mailers to pay all of their attributable costs and one-half of the institutional (overhead) costs paid by the equivalent regular rate class of mail. This brought about a large increase (over

a period of time) in nonprofit rates. However, part of the cost of the lower rates will, in perpetuity, be paid by the Postal Service and regular rate mailers.

An important part of the eventual acceptance of the compromise by all parties was the promise, written into the legislation and reiterated in the report language, that no more categories of nonprofit mail would be created. Current campaign finance bills violate this commitment only 3 years after the revenue foregone legislation was passed.

Finally, requiring the Postal Service and its customers to pay part of the cost for low cost political mailings is simply bad public policy. It is simply public financing in another, less obvious and more harmful form. Those in favor of public financing should support nothing less than clear and unambiguous financing directly from the federal treasury. Those against public financing should, in all honesty, be against this approach, too. It does no favor for the cause of open and honest political discourse to obscure the actuality of public financing by disguising it as merely mandating lower postal rates. Somebody has to pay for them and that somebody, in this case, is the public.

Again, Mr. Chairman, the Direct Marketing Association appreciates the opportunity to testify on this important subject. As difficult as it may be, it is time to return to the drawing board. We would be happy to work with you and your staff in moving toward this goal.

The CHAIRMAN. Well, let me say there was great clarity in your testimony, and as I sat here and listened very carefully I thought back about the Founding Fathers and all of us have studied the origins of this country, and I was down in my State of Virginia where we are proud to say a number of the Founding Fathers plowed the fields and legislated on our behalf, and really when you stop to think, this country was put together as a federation of States to achieve several purposes. One was to provide for the common defense and keep the enemy from crossing our shores; the second was to print some money which would be acceptable in the several States; and the third was to deliver the mail. And beyond that most folks think there is not much reason for government. That is the fundamental thing.

And here we are dealing with one of the three most fundamental needs for a federal system together with our several States, and with your parting comment, Mr. Barton, and your opening comment, Mr. Zelkowitz, it is clear that the proposals to involve some reduction in costs to candidates for their mailing is simply a public subsidy. I mean is that not it? That is all there is to it; is it not? Public subsidization of the races through mail; is that correct, Mr. Zelkowitz?

Mr. ZELKOWITZ. Yes, that is, Mr. Chairman.

The CHAIRMAN. I mean let us call it what it is. I mean if you disagree, put another name on it.

Mr. ZELKOWITZ. No, it is a public subsidy depending on how the legislation is formulated. It depends on exactly how—whether it is the rate payers or whether it is through appropriations, but that is a subsidy.

The CHAIRMAN. I like to try and deal in simplicity, and I want to see if we can frame it in simple terms. We have got a mail system. You have got a very complicated rate structure. I have been involved, as have other Members of the Congress, through the years. We have created this postal system now as a

quasi-private/public institution. You are not clearly out of the red yet, are you, in everything you are doing? I see some profits from time to time. What is that? What can you comment on that?

Mr. ZELKOWITZ. Some years we do turn a profit. This past year we did.

The CHAIRMAN. All right. Beg your pardon?

Mr. ZELKOWITZ. This past year we did.

The CHAIRMAN. And the people are very concerned when you have to raise rates; am I not correct on that?

Mr. ZELKOWITZ. Yes, they certainly are.

The CHAIRMAN. And into this complex system now comes another rate structure for candidates; is that not about it?

Mr. ZELKOWITZ. That is correct.

The CHAIRMAN. And the revenues required to run this system through the rate structure are suddenly going to have to accommodate for this reduced postage; is that correct?

Mr. ZELKOWITZ. That is correct. It would have to come from our rate payers, our customers.

The CHAIRMAN. Then it is plain and simple a public subsidy?

Mr. ZELKOWITZ. Yes, that is correct.

The CHAIRMAN. Now I will not repeat all the questions, Mr. Barton. Do you agree with that?

Mr. BARTON. Oh, yes, we do agree with that.

The CHAIRMAN. Simple as that.

Mr. BARTON. And it is a public subsidy, though, in a different form which is more dangerous than just taking it out of the Treasury because you are affecting the health of the business of both the Postal Service and our businesses, yes.

The CHAIRMAN. That is correct. Fine. Senator Feinstein.

Senator FEINSTEIN. You do not leave with me very much, Mr. Chairman. However—

The CHAIRMAN. I have seen you take very little and work on it with great determination.

Senator FEINSTEIN. Well, I am going to try and do that right now. I am going to try and do that right now. You know there are those that say we need some kind of campaign finance reform, and there are those that say we do not want any change. The fact of the matter is to get your message out costs money. It is going to cost somebody money. The question is how do you limit and how do you do it? It is very different when you come from a small state—you know some have 500,000 people in the state, others have 32 million—how a candidate no matter how well-known or how unwell-known is able to get their message out. Now let me ask some questions on this. I recognize the Postal Service does not want to do this.

But it seems to me that there are some things that can be done. One, there are postage meters provided now. The meter itself could be so configured that it would only be accessible for eligible candidates. Secondly, that there could be qualifying size and bulk on a piece of mail to keep costs down. And I think you

could limit numbers at least to give people a fair shot. Now, all of this is with the voluntary limit on expenditures. The alternative is to keep going the way it is going. As I said earlier, I did three campaigns and had to raise \$42 million to run in the state of California, two Senate races and one gubernatorial race. It should not have to be this way.

So I would like to ask you gentlemen instead of tearing it down, what would you suggest the Postal Service could do? When I started, the bulk rate was, I think, under a nickel. It is now, dependent I guess on the degree of sort, anywhere from 15 to 21 cents per piece of mail. That is a lot of money for one piece of mail if you want to try to reach 10 million people. What would you gentlemen suggest? I mean do you really think the Postal Service should be beyond the reach of candidates for major political office in this country, because that is what has happened?

Mr. BARTON. No. I mean I am not sure about the Postal Service. No, not only do we not think it should be beyond the reach of candidates for political office, we think it is an excellent way to campaign, and, in fact, in any campaigns I am involved in, I urge them to use the mail. And actually even though 15 cents apiece sounds expensive, it is actually as cheap a way as you could really get your message to an individual person, but we will not argue that. Our argument is not so much whether candidates should be able to use the mail. Our argument is that if Congress is going to mandate a lower rate, then it should pay for it because if it does not pay for it, if Congress does not provide for a funding mechanism, then it means that the businesses and the individuals who use the Postal Service will pay for it, and that—and I have to really emphasize this strongly—in terms of current day postal finance and the existence of the Postal Service, the very existence of the Postal Service, can be another step toward driving it into a kind of business that will not function very efficiently or very well.

Senator FEINSTEIN. Well, do you gentlemen have a suggestion?

Mr. BARTON. So you are asking us—well, one possible suggestion would just be to provide the appropriations to pay for all this. That is a suggestion.

Senator FEINSTEIN. Can you make a suggestion on how the cost could be kept down? You are the experts. I am not.

Mr. BARTON. Well, the way that mailers keep costs down, but I think that you have already examined that, in other words, the bulk rate is far cheaper than sending it first class. You can use very sophisticated mailing techniques, which most of the major political organizations I know already have, in order to get the rate down to the lowest possible rate in terms of sortation and delivery. That is being done now. If you want to provide an artificially low rate that would not make any sense in terms of business, then again I believe it is incumbent on finding a way

to pay for it without having the rate payers pay for it meaning the people who use the mail.

Senator FEINSTEIN. Meaning? I am sorry?

Mr. BARTON. The people who use the mail. Because you are dealing with what is essentially a business here and businesses cannot afford to provide below cost services forever without hurting their financial bottom line and hurting their services in the future. I think I would like the Postal Service to talk a little more now.

Mr. ZELKOWITZ. Well, I have been listening because I agree with Mr. Barton totally. And I agree that basically by placing the subsidy on the backs of postal rate payers, you are artificially raising our prices which hurts the Postal Service competitively. Looking beyond, I guess, the funding, you have made a couple of other suggestions as far as content restrictions on the mailings or postage meters only being available to candidates, and I am not sure practically that that can be done. Yes, I suppose in any bill you can place content restrictions, but it has got to be understood then that postal clerks have to somehow monitor that mail and that creates a cost on us and also creates lags and delays in the mail.

But again our main concern is the funding, and that if candidates are given lower rates that somehow those rates be funded through appropriations.

Senator FEINSTEIN. Well, the postage meter I would think would have a specific mark that it would put out which would qualify a piece of mail. Let me ask Mr. Barton, Mr. Barton, what do your members pay right now for an average piece of mail?

Mr. BARTON. I would have to get that figure to you. The lowest automated rate in effect that I can think of right now, and I would have to—it is going in effect on July 1—the lowest I can think of probably runs around 12 cents, which I could pull it out of my briefcase, which is what we call a saturation rate, and do not hold me to that exact. The saturation rate is when you hit virtually every household on a carrier route.

Senator FEINSTEIN. Well, all my bill calls for is that rate, the lowest nonprofit rate.

Mr. BARTON. Well, that is not the nonprofit rate.

Senator FEINSTEIN. If your pieces can qualify, why cannot candidate pieces qualify?

Mr. BARTON. No, that is not the nonprofit rate. the nonprofit rate is much lower than that. That is the lowest commercial rate. The nonprofit rate will be beginning next year down as low as 6 or 7 cents apiece for that for what we are describing. And for what I was using in my assumptions, which is called the enhanced carrier route rate, which I think is the most logical rate it would go at, it would be 8.5 cents apiece for the nonprofit and 15.5 for the regular rate, and my computation was the difference between those two rates.

Senator FEINSTEIN. But in other words, your lowest rate is 12 cents?

Mr. BARTON. Do not hold me to that. That is close. Please do not hold me to that.

Senator FEINSTEIN. Mr. Chairman, that is all my bill asks for is just the lowest rate that other bulk mailers have access to. I have a hard time understanding—

Mr. BARTON. No, no, I do not mean to contest it, Senator Feinstein, your bill and Senator McCain's bill defines this as nonprofit so it asks for a much lower rate than that unless I am mistaken and your bill does not define it as nonprofit mail.

Senator FEINSTEIN. I can always amend it.

[Laughter.]

Mr. BARTON. Well, the point then being, frankly would be that candidates are already qualified for that lowest rate, for the lowest regular rate, and we would have no problem with that.

Mr. ZELKOWITZ. They are eligible for that low rate if they prepare the mail in accordance with the standards for that rate.

Senator FEINSTEIN. May I ask what that is?

Mr. ZELKOWITZ. I am not sure if Mr. Barton is getting those standards.

Mr. BARTON. I am not sure I can now.

Mr. ZELKOWITZ. But our rates depend on, for one thing, how fine you presort the mail, and as Mr. Barton said, there are saturation rates. We can get you the exact standards if you would like that and supply that.

Senator FEINSTEIN. Rather than take the committee's time, if you would, I would appreciate that very much.

The CHAIRMAN. We are glad to have you take such time as you wish, Senator, because while we may have our differences I have to admire your courage in this field, but I would urge the witnesses to sort of contain their responses to knowledge that they have or can acquire for the benefit of the committee. Oftentimes witnesses step out into areas and—

Mr. BARTON. I have a sheet here, Senator, in which I do my assumptions, which are pretty loose assumptions on this, and be glad to supply that to Senator Feinstein and to the staff.

[The requested information is included with Materials Submitted for the Record.]

The CHAIRMAN. Senator McConnell?

Senator MCCONNELL. Thank you, Mr. Chairman. I understand Senator Feinstein's frustration. Running in California is like running in a separate country.

Mr. BARTON. By the way, I have to beg your pardon. I moved you up to Minnesota.

Senator MCCONNELL. It seems to me that the problem the Senator from California has is the contribution limit which was established back in 1974 at a time when a Ford Mustang cost \$2,700, a gallon of milk cost 65 cents, and a new house cost

\$32,000. So somebody running statewide in California is stuck with this ancient contribution limit trying to raise a whole lot of money to reach 32 million people. In fact, campaigns in California on a per voter basis are nowhere near as expensive as in a lot of other states.

Mr. Chairman, I do not really have much to say other than to thank the witnesses for coming. They have pointed out that under the McCain-Feingold bill, we have taxpayer funding of political campaigns. I mean there has been some effort here—I am sure honest—but it appears to me to a bit of a deception to try to claim that somehow this measure does not have taxpayer funding. It is just not so. In addition to that, it has entitlement for political candidates, and in addition to that—although it is not the subject for our discussion today—you are going to have an enormous bureaucracy to try to enforce all of these speech limits. But I want to thank the witnesses for pointing out that this is a taxpayer-funded bill. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. I am going to ask one or two more questions. We have a superb staff on this committee, and they have carefully drafted these questions so in turn we can carefully provide the full Senate with a record, and while we may have covered some aspects, I want to make sure our record is good and tight. First, Mr. Zelkowitz, do you have any sense of how many new employees it might take in the Postal Service to keep track of the mailings that would be regulated by these reform proposals?

Mr. ZELKOWITZ. No, I do not. And some of that—

The CHAIRMAN. If that is the case, you can supply it for the record if you want to go back and do a little analysis, but it would require an increase in staffing; would it not?

Mr. ZELKOWITZ. I think it would both to process the applications to certify eligibility plus it certainly would require more people to—

The CHAIRMAN. Monitor the flow.

Mr. ZELKOWITZ. —you know accept the mailings. Now some of this may depend, though, on whether there are content restrictions on what can be mailed.

[The requested information follows:]

In determining the number of new employees required by enactment of legislation permitting the campaign committees of Senate and House candidates to mail at special bulk third-class rates, we based our calculations upon the number of additional workhours that would be incurred by the Postal Service. It is unlikely that any individual employee's responsibilities would solely concern the administration of this legislation; instead, the efforts of numerous employees would be required. We estimate that it would require about 21,000 hours to administer the proposed legislation. This includes the time needed for the processing of applications to mail at the special rates; revocation of authorizations after elections are concluded; acceptance and verification of the mailings; and employee training. It does not include the labor that would be needed to handle the mailings, i.e., to process and deliver the mail after acceptance at entry offices.

The CHAIRMAN. Yes. Now, again, Mr. Zelkowitz, with the advent of the Internet, mass faxes and other modern types of communication, which are in direct competition with you, and therefore you are trying to stay alive in a competitive field, are you concerned that a mandate of reduced-fee mailing will impose on the post office increased costs at a time you are struggling with the other competition?

Mr. ZELKOWITZ. Yes, exactly. It will increase our costs which would help our competition certainly.

The CHAIRMAN. Mr. Barton, the cost estimate that you and Mr. Zelkowitz provided are a little different. Mr. Zelkowitz 50 to 100 million, your 300 million. Could it be that your estimate was based on general and primary elections while Mr. Zelkowitz's estimate was based only on general elections?

Mr. BARTON. My estimate was based on primary and general elections, based on two.

The CHAIRMAN. So the two.

Mr. BARTON. Yes.

The CHAIRMAN. So that explains the difference between the—

Mr. ZELKOWITZ. That is the main difference and there are a couple of other differences though.

Mr. BARTON. The Postal Service used a lower differential between the nonprofit rate and the bulk rate and the regular rate than I did. And we can work our way through that. One thing is the Postal Service used the rates that are in effect now or in effect in 1994. I used the projected rates that will be in effect next year, and which the differential will be wider. That is it.

Mr. ZELKOWITZ. We also assumed, I believe, that candidates would presort the mail a little bit more finely and pay a little bit lower rates.

Mr. BARTON. Yes, yes.

Mr. ZELKOWITZ. And I think Mr. Barton's estimates, at least for the general election, assumed there would only be two candidates, and we had looked at actual numbers of candidates from the 1994 elections, and there are generally or at least on the average are more than two candidates in these elections. And that, I believe, would actually increase their estimate for the general election.

Mr. BARTON. I can show you my figures. I mean I think they are sound figures. They are a little higher because my assumptions were that there would be broader use, I think, than the assumptions the Postal Service is making, that there be a wider rate differential, which is supportable here. The main point really is almost not—the total amount, 100 million, 300 million, is a good bit of money to take out of Postal Service coffers without paying for it.

Mr. ZELKOWITZ. I think another difference, too, is that the 50 million was for one piece of mail, 100 million was for two pieces. If we would use three pieces of mail, then that would be even more. That was another difference.

The CHAIRMAN. Let me, Senator Feinstein, tell a little personal story here to try and dramatize a point that concerns me. All of us in political life are involved in parades. Matter of fact I enjoy going back into my state, joining in a parade, and some people wave at you and some people have some other thoughts they express, but on this particular day I was the grand marshal. As such, I was in the lead car and preceding me was the best band and Old Glory and the local legionnaires. And we are all lined up for the parade, and I was seated in the rear of a wonderful old antique car, and I was feeling pretty good about the whole thing. And the parade was ready to kick off in about 3 minutes, and I was impressed with the timeliness of how this was operating.

Moments before the parade started, I heard a siren and up roared the sheriff, properly escorted by two of his deputy cars and red lights firing, and they said too bad, Senator, the sheriff is going to lead this parade. Well, at that point I quite readily accepted the local decision-making power, and the person in charge of the parade in a very polite way said, well, of course, you understand, Senator, here in this county the sheriff is king, and he is far more important than a United States Senator. And I allowed as how I fully appreciated that and the sheriff could lead off the parade.

All of this little bit of corny rhetoric is to say what happens when the sheriff wakes up, and in our state they are elected by popular election, and finds that the United States Senator gets a reduced bulk mail rate and he does not have the same advantage in his races? At what point, if we achieve this, for the Federal office holders, do the State office holders from governor on down to sheriff say, hey, stop everything, we want a piece of this action? Now that is not a question for you to answer because it is out of your field, but I would hope those who advocate this proposal would somehow inform me and enlighten me as to how I deal with my sheriff, and believe me, I do not want to tangle with any sheriff in my state if I can avoid it.

Senator MCCONNELL. May I just add quickly, Mr. Chairman?

The CHAIRMAN. Yes.

Senator MCCONNELL. I think that is a very good point. I think it is an absolute certainty that what the chairman is projecting here would come about. And I would be interested if you could possibly do some additional calculations and supply for the committee what kind of costs we are really talking about when everybody gets in the act, which would be a virtual certainty. I know you cannot do that today, but if you all could supply us with some of those figures, that would be very helpful. Thank you, Mr. Chairman.

Mr. BARTON. We will work together with the Postal Service on that.

[The requested information follows:]

If the legislation were expanded to cover State and local elections, the costs increase dramatically. Attempting to calculate these figures is, of course, more difficult than calculating the figures only for Federal candidates, but an estimate can be discussed. Depending upon how many candidates are on the typical ballot across the nation, and how many times a candidate was allowed to mail, costs for giving State and local candidates reduced postage rates could range from \$213 million to more than \$1 billion. The \$213 million figure is based upon a typical ballot containing 12 candidates, mailing two pieces of mail per voter. The approximately \$1 billion figure is attained if the typical ballot contains 36 candidates, mailing three pieces of mail per voter.

[Additional materials are included with Materials Submitted for the Record.]

The CHAIRMAN. Any comments from my distinguished friend from California about the sheriff and the local races?

Senator FEINSTEIN. You could always tell him to run for the United States Senate.

The CHAIRMAN. I would not dare because he might win. I mean he is a pretty popular fellow.

Senator FEINSTEIN. Well, I guess the frustration is how does one find a way to reduce the costs of campaigning when everything a candidate does the price for which is increasing exponentially?

The CHAIRMAN. Well, Senator, we will end up on that note.

Senator MCCONNELL. Raise the contribution limits, I think. Clearly that should have been indexed 20 years ago, but that is not the subject of today's hearing.

The CHAIRMAN. And the value of these committee hearings is to allow us to have respectful differences. You say how do we reduce the costs? I think this proposal is not a cost reduction. It is a cost spreading to another source of funding. The cost probably for the federal race will remain pretty much the same, but we would have a new source of funding through really by those who use the mail. That is my concern.

If you do not have further questions, we will go to the second panel.

Thank you very much, gentlemen.

The CHAIRMAN. We now have Mr. Thomas E. Mann, speaking on his own behalf. He is Director of Government Studies at Brookings Institution. And Professor Michael J. Malbin, also speaking on his own behalf, but he is Professor of Political Science at the State University of New York at Albany. We have just been informed that the Senate will commence voting at 10:30, which means we have roughly 20 minutes in which we could allocate time to each of you and hopefully get questions in because there are several votes. As a consequence, we would be substantially delayed in returning, and then such testimony as we are not able to get in direct presentation, we will incorporate in the record. So if each of you could summarize your statements, it would be helpful. Thank you very much for taking of your valuable time to make a contribution on this very important subject.

TESTIMONY OF A PANEL CONSISTING OF THOMAS E. MANN, DIRECTOR OF GOVERNMENTAL STUDIES, THE BROOKINGS INSTITUTION, WASHINGTON, DC; AND PROFESSOR MICHAEL J. MALBIN, DIRECTOR, CENTER FOR LEGISLATIVE STUDIES, ROCKEFELLER INSTITUTE OF GOVERNMENT, STATE UNIVERSITY OF NEW YORK AT ALBANY, NY

Mr. MANN. Senator Warner, thank you very much. I am delighted to be here. Senator Feinstein, Senator McConnell. Senator McConnell and I have on occasion been kindred souls. We are in the minority of Americans who think congressional term limits are a bad idea, but that is a discussion for another day.

First, Mr. Chairman, I wanted to call your attention to an Internet-based discussion we have going on campaign finance reform. We have assembled a group of 16 experts including my colleague, Professor Malbin, to try to deliberate on the problems and possible solutions and really look at the tradeoffs and administrative difficulties that might be entailed, and I hope members of your staff would avail themselves of the discussion. If you want to put questions to our experts, we would be delighted for you to play such a role.

There are problems with the present system. The high cost of campaigns is not a problem in the sense that we spend too much money on elections. We do not. It is a problem in the sense that it does shrink the pool of potential candidates and frankly entails incumbent Members in a money chase that I think distorts the way in which they would otherwise spend their time here in Washington. Second, there are problems of conflict of interest when Members seek and receive contributions from those with a direct interest in legislation. The conflicts are inevitable and they raise all kind of questions in the broader public. That does not mean PAC contributions buy votes. It is not a point of the arrow moving in a particular direction. It is a broader problem of conflict of interest. And the third problem is that there is inadequate information available to the electorate about the choice of candidates. We do not have enough political communication in this country, particularly about challengers.

Identifying the problems turns out to be infinitely easier than crafting solutions that are both workable and acceptable. I have enormous respect for those senators and representatives involved in putting together the Feingold-McCain bill, but I have to tell you I think they fall well short of the mark. There are constitutional problems that are raised. I think the incentives are woefully inadequate and most members would decline them.

It is easy to see how the various limits would be evaded. In some respects I think the money chase would be intensified because you limit the ability to raise money and yet the ceiling

on spending is still pretty high. I think it could hurt challengers and finally there are enormous administrative problems in trying to implement this legislation. You can try to begin working with it, but the only way to work with that bill is to accept the need to pump a large amount of public resources into it.

I do not think that is going to happen and, therefore, I am here to respond to your invitation to put some new ideas on the table for campaign finance reform. I have six to suggest to you in the briefest of fashions.

Number one, increase the role of political parties in the financing of campaigns. You could simplify, increase and index the limits on direct contributions and coordinated expenditures on behalf of candidates by political parties. But in order to do that, you are going to have to deal with the legitimacy problem of the money that parties get, and that means bringing all soft money under Federal contribution limits. I think it is a reasonable tradeoff frankly.

Second, use the congressional—

The CHAIRMAN. How would you police that though? How would you—concept is there—but how would you police it?

Mr. MANN. There are substantial problems associated with limiting funds of any sort, but I believe right now that we give parties incentives to go raise very large contributions from corporations, from labor unions, from wealthy individuals in the hundreds of thousands of dollars. Frankly, that is pretty easy to police at the Federal level. It is possible to set a law and to require that all such dollars that go to and through the national parties are, in fact, under Federal contribution limits.

I then lift the limits that now exist rather substantially.

Senator MCCONNELL. Mr. Chairman, I think what Tom is saying in addition, though, is that he would take the shackles off what parties can do for candidates, which is now written into the law.

Mr. MANN. Exactly.

Senator MCCONNELL. In other words, the Republican Senatorial Committee in Virginia can spend on behalf of Senator Warner a certain amount. You would take the shackles off of the parties in return for turning soft money into hard money?

Mr. MANN. Exactly. Exactly. My second point goes to the use of the congressional frank. Their efforts—

The CHAIRMAN. Let me interrupt a minute.

Mr. MANN. Yes.

The CHAIRMAN. Given the importance of this testimony, might I ask you, colleague and other colleagues, I do not mind voting in sequence. I will go over and vote, then come back. Could we rotate that way?

Senator FEINSTEIN. There is just one vote?

The CHAIRMAN. There are two. That is the problem.

Senator MCCONNELL. Oh, there are?

The CHAIRMAN. Yes. So I think what—I want to enable these witnesses who put a lot of time and effort and travel in getting here to give you the full opportunity. So when the bell strikes here at 10:30, I will just quickly absent myself and go over and vote and come back.

Mr. MALBIN. Mr. Chairman, may I interrupt his testimony?

The CHAIRMAN. Yes. Now that mike is your only means of communication. You are going to have to grab it, the microphone.

Mr. MALBIN. Tom Mann and I have the same recommendation.

The CHAIRMAN. Beg your pardon?

Mr. MALBIN. We have the same recommendation on this point so let me also answer your question before you have to vote.

The CHAIRMAN. Good. Yes.

Mr. MALBIN. Except my recommendation is that you literally lift the limits on what parties can contribute to or spend on behalf of candidates, provided you get some control over contributions to the parties. I think there is no point—you will have distanced the parties from the interested givers if you do that. Your question was how would you administer it, and the answer is that I do not think you will be able to control direct contributions from givers to state and local parties. You will be able to control contributions to the organizational costs of the national parties or to funds that in any way are administered or assisted by the national parties.

Mr. MANN. But you could preclude the national party from being involved in facilitating, coordinating such direct contributions to State and local parties. I mean I think that is the key here. We want to free up parties to do what they are in the business of doing, but we want to ensure that the public does not see this as simply a way of laundering interested money in large sums to candidates.

Senator FEINSTEIN. On this point, Mr. Chairman, could I just interject one puzzled question?

The CHAIRMAN. Yes.

Senator FEINSTEIN. You are saying there would be no limits on soft money?

Mr. MALBIN. No.

Senator FEINSTEIN. Therefore, a corporation could—

Mr. MALBIN. No, no.

Mr. MANN. Just the opposite.

Mr. MALBIN. No, the opposite.

Mr. MANN. We want to eliminate soft money as a concept. We want to bring all money under Federal contribution limits, all money to political parties, to the national political parties, under Federal contribution limits. So rather than free it, we want to free the ability of parties to work on behalf of their candidates. I would live with limits but much higher limits than we have now. Mike would take it off entirely. The point is more party activity, but restrict the way they—

Senator McCONNELL. Yes.

Mr. MANN. —they can get their money.

Senator FEINSTEIN. So you are saying then once the candidate becomes the candidate of the party, that party finances the campaign?

Senator McCONNELL. No.

Mr. MALBIN. It is money to the party that would be limited. Money from the party to the candidate would either be substantially increased or—

Senator McCONNELL. In other words—

Mr. MALBIN. It is the money to the party that is a problem.

Senator McCONNELL. In other words, taking the following hypothetical. There is a Senate race in California. And the Democratic National Committee thinks that winning the Senate race in California is the most important thing on its agenda. Under this proposal it can spend anything it wanted to on behalf of the Senate race in California. It might choose not to spend money on behalf of the Senate race in Kentucky because they thought it was a loser for whatever reason.

In other words, the limitations on what parties could do on behalf of candidates, setting its own priorities, would be removed, but he would suggest that soft money be eliminated. So, therefore, any contributor to the national party would be limited and disclosed.

Senator FEINSTEIN. I understand. Thank you.

The CHAIRMAN. You were on just your first point. Now go to your second.

Mr. MANN. Yes. The second point really goes to the frank. There are efforts underway to eliminate the use of the frank for mass mailings in election years. I have an alternative proposal. Let us take those resources which are now budgeted but make them joint mailings during the election year. This is very uncomfortable for incumbent Members of the House and Senate, but, in effect, you create a voter information booklet with the congressional frank during election years so that the major party candidates have the opportunity to present, if you will, a platform to the electorate through the use of the congressional frank.

Third proposal, institute a 100 percent tax credit for small, in-state contributions. We used to have a partial tax credit, a 50 percent tax credit. I like the idea of this because it preserves a market mechanism. It is not, as Senator McConnell suggested with something else, an entitlement for candidates. It rather creates an incentive for candidates to raise money in small amounts within their state and therefore diversify their base of contributors.

Number four—this may be a little more controversial—provide broadcast vouchers for purchase of television or radio time to qualifying candidates. What I have in mind here is as the new digital channels are distributed to broadcasters, commitments

ought to be made to provide some time on television or radio for candidates for Congress. These commitments could be turned into vouchers that are distributed to candidates who qualify by raising a minimum amount in small, in-state contributions.

Every other democracy, as best as I know, Mike, in the world uses the air waves, television and radio, to allow parties and in some cases candidates to make their case. This deals, Senator Feingold, with your concern about the cost—

Senator FEINSTEIN. Feinstein.

Mr. MANN. Feinstein. I am sorry. Oh, I am so sorry—the cost of campaigns. I believe this is reasonable. There are public affairs programming requirements that have been made in the past. A bonanza is being created through the new digital channels, and I would urge your Committee to look into the possibility of creating a public good out of this transaction.

Fifth, and I have only two more, the fifth is to ease the difficulty of raising seed money by challengers. It is hard to get a candidacy going from scratch, and the idea here is to raise dramatically the contribution limits on individuals for the first amount of money that you raise. In a House race, it would probably be \$100,000, and instead of \$1,000 limit, let it be \$10,000. You would disclose that, and the challenger would have to explain to his or her potential voters why he or she took these contributions from wealthier individuals, but it would provide a basis for actually getting a candidacy jump-started.

The final factor, and if you do not deal with this, you are going to be judged to have failed, Mr. Chairman, is to deal explicitly with the conflict of interest that arises when we combine fundraising and lawmaking. It is not easy, but you know right now it is a crime for a public official to ask for and receive a gratuity in response from someone who is seeking action by the government, and yet it is perfectly legal to ask such an individual for a campaign contribution.

This raises in the public's mind all kinds of questions about conflict of interest. I have a number of specific proposals. I would like you to be prohibited from requesting campaign contributions from registered lobbyists or from discussing with them contributions from their parent organization or clients. I would like to protect lobbyists by prohibiting them from contributing to candidates for Congress. I would like to have even more stringent prohibitions on fund-raising activities occurring in public offices with public phones and by congressional staff members in their non-working time. These may not be the right ideas, but I urge you to seek ways of trying to deal with conflict of interest.

Senator MCCONNELL. Tom, would you yield on that point?

Mr. MANN. Yes.

Senator MCCONNELL. I assume you are going to cite some cases because you know what you are recommending is blatantly unconstitutional.

Mr. MANN. You noticed here I say if constitutional. There are real problems here, but we now have some precedent in treating registered lobbyists separately from others in some of the recent legislation, lobby registration and gift ban rules that were adopted. Frankly, rather than limiting them, Senator McConnell, what this does is frees them up from the kind of pressure that they are subjected to as they try to go about their work. This is not a bash lobbyists suggestion. It is a protect lobbyists suggestion, and allow once again the conversations between lobbyists and legislators to occur separate from the legislator's constant need to raise money.

As I say, these are highly controversial and problematic, but I am afraid if you do not deal with this one, the public is going to conclude that you just have not wrestled with the real problem here.

Thank you.

[The prepared statement of Mr. Mann follows:]

PREPARED STATEMENT OF THOMAS E. MANN, DIRECTOR, GOVERNMENTAL STUDIES, THE BROOKINGS INSTITUTION, WASHINGTON, DC

I am pleased to have the opportunity to testify before you on the important and difficult issue of campaign finance reform. While I have been asked to share my ideas for new approaches to reform, I first want to take this opportunity to tell you about a new experimental effort we have launched to conduct a deliberative exercise on the Internet over the next several months designed to improve the quality of debate on campaign finance reform. Sixteen well-known experts on campaign finance reform, including scholars and activists representing a range of perspectives on the issue, have agreed to participate in a conversation moderated by me, communicated by E-mail, and made available to all interested public officials and private citizens on the World Wide Web.

Initial rounds of conversation are focusing on the legislation introduced by Senators Feingold and McCain, since it has attracted bipartisan co-sponsorship in both the House and Senate. The purpose of the exercise is neither to praise this particular approach to campaign finance reform nor to bury it, but rather to ensure that those engaged in the debate have thought through the implications of the proposed reforms, calculated as best as possible the benefits and costs, considered possible unintended consequences, weighed alternative approaches and, more generally, clearly explicated the desired objectives and the means for achieving them. Past debates on campaign finance reform have suffered from a failure to move beyond long-held, sharply polarized views on various approaches to reform. We hope to overcome this problem by conducting a serious deliberative exercise that operates in tandem with legislative efforts on Capitol Hill.

The first two rounds of conversation by the Brookings Working Group on Campaign Finance Reform are posted on our Web site at: [http:// www.brook.edu/gs/campaign/home.html](http://www.brook.edu/gs/campaign/home.html).

We will be discussing other aspects of the proposed legislation as well as alternative measures in the weeks ahead. I hope you will consider our Working Group a resource to draw upon as you schedule additional hearings and begin to mark up legislation.

Now let me turn to the substance of the issue before your Committee. I will begin by summarizing my own view of the problems with the present system of campaign finance. Then I will briefly evaluate the approach taken in the legislation introduced by Senators Feingold and McCain. Finally, I will suggest some alternative approaches to reform that merit your attention.

The present system of congressional campaign finance has three serious deficiencies. The high cost of running a serious campaign for the House and Senate shrinks the pool of able individuals willing to become candidates, limiting the field to those with personal wealth or the stomach for nonstop fundraising. Expensive campaigns also lead members of Congress to become consumed (if not obsessed) with raising money. Fundraising has become a way of life for members, adding to the frenetic quality of their schedules, distorting how they would otherwise allocate their time, and diminishing opportunities for face-to-face deliberation on serious problems confronting the country. The money chase has added to the tendency of members to commit to positions early, often eliminating the prospect of debate and deliberation changing minds or shaping outcomes.

A second problem with the system is the conflict of interest, real and perceived, that results when members seek and receive campaign contributions from individuals and organizations with direct interest in matters pending in Congress. The populist version of this critique, drawing its strength from the regular diet of stories on PAC contributions, national party soft money, and Washington fundraisers, is that politicians are routinely bought and sold by special interests. But one needn't be a complete cynic to sympathize with those who argue that monied interests are more likely to attract the attention and energy of members of Congress than ordinary constituents. Indeed, one of the most distasteful aspects of the present system is the brazenness with which some politicians pressure lobbyists for campaign contributions, a practice it is not unreasonable to label "legal extortion."

A third deficiency with the present system of financing congressional campaigns is its failure to generate adequate information about the choice of candidates in House and Senate races across the country. Most Americans know precious little about their representatives in Congress; they know even less about the men and women who challenge these elected officials. While some inequality in resources between incumbents and challengers is inevitable, campaigns have no hope of fulfilling their proper role in our democracy if the means are not present to convey to the electorate the most basic information about the candidates and their platforms.

Identifying the problems with the campaign finance system is infinitely easier than fashioning effective and acceptable solutions. There are clear limits to what is permissible under the prevailing constitutional ruling that equates campaign spending with speech. No measure regulating money in campaigns can (or should) fully compensate for the other sources of inequality between incumbents and challengers and among individuals and groups in society. Banish every private dollar from campaigns and those inequalities would persist. Slowing the money chase and reducing the amount of "interested money" in congressional campaigns requires identifying new, acceptable sources of funds that candidates can more easily tap. But what other than public financing—about which the public has some serious reservations—fits the bill?

These complications (and they are only the beginning) suggest that those who believe a simple solution to campaign finance reform is at hand are badly mistaken. To (mis)quote Ross Perot, "It's definitely not that simple." On the other hand, those who see only virtues in the present system and direct all their energies toward protecting the status quo are equally misguided. I have enormous respect for those who are making good-faith efforts to deal with the complexities of this issue, even when I believe their solution falls well short of the mark.

Such is the case with the legislation proposed by Senators Feingold and McCain and, in the House, Representatives Smith, Shays, and Meehan. I am sympathetic with their goals but skeptical of the means identified for achieving them. My concerns are based on the questionable constitutionality of some of the provisions (most importantly, the abolition of PAC's); the inadequacy of the incentives for enticing candidates to comply with voluntary limits on overall and personal spending; the ease with which some of the limits (e.g., on spending and on out-of-state and special interest contributions) can be evaded; the extent to which new limits on contributions will intensify the money chase, increase the leverage of savvy contributors, and further diminish the prospects of challengers; the

inadequacy of a single spending limit for a highly diverse set of House districts; and the difficulty of administering a system of congressional spending limits, especially given the structure and resources of the FEC.

It is possible to deal with some of these concerns but in most cases it requires an expenditure of substantial public funds not anticipated in this legislation. Given the political as well as substantive obstacles, it is worthwhile considering some alternative approaches, less comprehensive in character, that might begin to improve the way in which congressional campaigns are financed and conducted. Here are a few ideas:

1. *Increase the role of political parties in congressional campaign finance.* Simplify, increase, and index the limits on direct contributions and coordinated spending by political parties on behalf of congressional candidates. But at the same time change the mix of funds available to parties by bringing all soft money under federal contribution limits. Parties ought to play a more central role in allocating resources to shaky incumbents and promising challengers, but to earn the necessary legitimacy with the public they must end their dependency on very large donations from corporations, unions, and wealthy individuals. Public funds, in the form of cash or credits with broadcasting outlets, might also usefully be distributed through the political parties.

2. *Use the congressional frank to distribute information from all major candidates during election years.* Efforts are underway in both houses to prohibit franked mass mailings during election years. Instead, the resources should be used to finance one or two joint mailings by major general election candidates in every House and Senate contest. Rather than reducing the amount of information about incumbents available to voters, reformers should seek ways of increasing what citizens know about all candidates.

3. *Institute a 100 percent tax credit for small in-state contributors to congressional candidates.* Congressional candidates should be encouraged to expand the base of small donors in their constituencies. A tax credit would maintain market discipline for candidates but greatly increase the number and diversity of potential contributors.

4. *Provide broadcast vouchers for purchase of television or radio time to qualifying candidates.* As new digital channels are distributed to broadcasters, commitments should be secured to provide television and radio time to candidates for Congress. These commitments can be distributed in the form of vouchers to candidates who qualify by raising a minimum amount (\$25,000, \$50,000?) in small, in-state contributions.

5. *Ease the raising of seed money by challengers through higher individual contribution limits.* Individual contributions limits of \$1,000 (already devalued 75 percent by inflation over the two decades since they were set in law) should be raised to \$10,000 for the first \$100,000 raised by congressional candidates. This would lower the barrier to entry for potential challengers who could persuade ten well-to-do donors to give them a chance.

6. *Adopt provisions, in law and congressional rules where appropriate, that explicitly separate fundraising from lawmaking.* Members of Congress should be prohibited from requesting campaign contributions from registered lobbyists or from discussing with them contributions from their parent organizations or clients. If constitutional, lobbyists should be prohibited from contributing to any member of Congress. (There is some precedent for treating registered lobbyists differently in new gift rules.) No fundraising activities of any kind should be permitted in public facilities (including the use of congressional office phones) and congressional staff members should be prohibited from engaging in fundraising for their employer, even in their off hours. Other means should be sought for dealing with conflicts of interest that arise when contributors seek legislative remedies and when legislators seek contributions from those with direct interest in legislation.

I am fully aware of the controversial and problematic nature of many of these ideas, especially the last, but I believe it is important to put them on the table for your serious consideration.

The CHAIRMAN. Good. Thank you.

Professor, we are all right. We have apparently another 12 minutes here that we did not anticipate.

TESTIMONY OF MICHAEL J. MALBIN, DIRECTOR, CENTER FOR LEGISLATIVE STUDIES, ROCKEFELLER INSTITUTE OF GOVERNMENT, STATE UNIVERSITY OF NEW YORK AT ALBANY, NY

Mr. MALBIN. Good. I will speak fast.

The CHAIRMAN. No. You take your time. We are going to get this done properly.

Mr. MALBIN. As you have said, I am here to speak for myself. That is just for the record. I am pleased to be on the Web site, the Brookings Web Site. I wrote that you will hear that I am speaking for myself because Tom and I do disagree on some of the things we say. It turns out that many of our recommendations overlap.

The debate on campaign finance I think has become very rigid in the last—

The CHAIRMAN. Very rigid?

Mr. MALBIN. Very rigid. It has become set in concrete; ossified is the word I use in the testimony.

The CHAIRMAN. Let me interject that you have had a very distinguished—both of you have written extensively on this subject, and I am going to put into the record the numerous areas in which you have addressed this issue from a wide range of perspectives. So there is no question about your dedication to understanding the subject, writing on the subject, and now joining us here today.

Mr. MALBIN. But while the debate has become rigid, the world has changed underneath the feet of the debaters. And so I think it is important to start off with some very broad questions before I get to the specific recommendations. I am going to begin by making an analogy to a field you all know, that the chairman in particular knows very well, and that is weapons procurement. You can make the same analogy to a large number of policy arenas. As you know, Mr. Chairman, some weapons, like some other policy proposals, keep coming back. They get proposed and repropoed even after the objective that they are supposed to serve changes. One political scientist refers to this situation as solutions in search of a problem.

I bring up the analogy because even though I think it is relevant, I do not think it is close to being perfect. Defense experts will debate with each other whether the DOD has reacted well to the changed international environment, but everyone in and out of the department at least has taken the intellectual challenge seriously. In contrast, I do not think that people who work on campaign finance are taking the challenge seriously enough. The leading reform packages are based on ideas that have not changed in 20 years; whatever you may have thought about them once, they are beside the point now.

Let me outline the main problems with some leading proposals, and then I will give you alternative ideas. The stated goals that the bill sponsored by Senators Feingold and McCain have introduced are first to reduce the importance of "interested money" in the legislative process, and, second, to improve competition. But the main thrust of those bills is not to deal directly with either of those problems but to limit spending, and then to include just enough incentives for the lawyers to be able to argue that they are voluntary. I do not want to debate the legal issues. I am not a lawyer, but I want to focus on whether spending limits will do what the sponsors want.

Let's look at competition first. I think it is beyond dispute among political scientists that the most important financial fact related to competition is how much the challenger raises, not how much the incumbent spends. On this point, I refer to an article of mine that you have or your staff has that I would ask you to place in the record rather than going through it. Political scientists are less unified in the debate over spending limits, but we all agree that too low a limit would inhibit challengers. Some people think appropriate limits can do some good for competition. I do not think they do much good at all. Everyone agrees that their importance pales in comparison to the resources that challengers need. So it is hard to see the leading bills as having very much to do with competition, in my opinion.

Now, the second stated purpose is to "clean up" the relationship between givers and legislators. And here again the bill is mostly indirect. The main method is that PAC's are banned, which I think is constitutionally questionable, to put it gently, and once again to limit spending. The argument seems to be if you put a limit on spending, you will limit the time that candidates put to raising money, and that in turn will limit the debt they feel to interest groups. It is a line of reasoning that seems to me to be very, very circuitous, far-fetched, dubious.

First of all, every contributor who gets in before the spending limit will not be affected by it. So the early givers, the ones who are here in town, the ones who attend the early fundraisers, are not going to be affected by the spending limits. Second, it assumes that if Congress puts a limit on candidates that that is the same thing as limiting spending on elections.

All right, you can try to write a law limiting candidates. The presidential spending limits try to do that, but frankly with questionable success. But what about activities that are not under the candidate's direct control? Based on the past 20 years, you know that independent expenditures, like the NRA's million dollars on behalf of nine Senate candidates in the last month of the 1994 election, are important. You know how important are voter mobilization efforts like labor's announced \$35 million plans for this election. But you know the really tough problems do not come from the loopholes you know—the really tough ones, the interesting ones, are the ones you do not know about

because they have not been invented yet. You need to be writing laws for the next 20 years, not for the last 20.

Just consider the most recent innovation, the Internet. Federal courts have been very clear in stating that the First Amendment protects issue education and advocacy. These protections extend to report cards that identify how an incumbent has acted. When I log on to the Internet, one of the addresses available is the Christian Coalition. I just click the mouse, and there I am on the report card. The marginal cost to the Coalition for my getting their report card is zero.

The Internet is almost surely going to bring the cost of maintaining far-flung political organizations way down, and this is going to blast holes in any spending limits that you will conceive of. You need to ask yourself when you think about the future what will the spending limit on candidates mean for the power of interest groups?

The CHAIRMAN. Excuse me. I am going to go vote and my colleague will soon follow, but I will be back.

Mr. MALBIN. Spending limits are going to decrease the importance of candidate committees and parties because that is what you can limit by law. At the same time, when you decrease the relative importance of candidates and parties, you will increase the relative importance of well organized national interest groups.

Senator MCCONNELL. You have heard me say this before. I like to use the analogy "rock on Jello." It is like putting a rock on Jello. You just simply force the speech out in other directions. It drives campaigns crazy. You do not have any control over the campaign anymore.

Mr. MALBIN. Right. Yes, like Jello, a very thin layer will stay there, but not very much else. No, I think it is more than that. I think that when you put a rock on Jello, the basic substance stays the same. I think what happens here when you try to limit the groups that become important to an election is that you transform the election process. When money oozes out, you have decreased the role of candidates and parties here, increased the role of interest groups. You have made the process, and thereby you have made government, less directly accountable to voters. It is a transformation, and I think one for the worse. It is almost 180 degrees opposite from the declared purpose of the sponsors.

So what do I think Congress should do since I do not think they should go about trying to limit spending. The more I come back to this subject, the more convinced I become that it is just plain futile—futile to pursue a strategy based on regulating spending limits. Contribution limits are relatively straightforward. They are relatively easy to understand. I do not think they cause the same kind of problems. But spending limits constantly put you in a position of playing regulatory catch up. People are always going to figure out new ways around the limit. Your analogy, Senator, is appropriate.

You, if you wish to have spending limits, will constantly be trying to figure out new ways to plug new loopholes. Many of them you will not be able to plug because of the First Amendment. Even assuming you could catch half of them, I think the whole effort is a waste of your talent and energy. It is a waste of Congress' time. There are other problems to deal with. It would be far more productive if Congress went directly after the problems it wants to address instead of using an indirect and unproductive approach.

Do you want to enhance competition? Here are some ideas. I have a number of proposals in the testimony. The most important one is the one that Tom Mann has already mentioned about the parties. The second most important, or equally important proposal, is the one he also mentioned about raising the seed money limit for contributions. My testimony happened to have \$25,000. His has \$10,000. We did not talk to each other in advance about it. Fine. I will settle on \$17,500. The point is that any contribution limit should be much higher for seed money, because early money is the hardest money to raise. The limit should be indexed for inflation, and you should index all of the 1974 contribution limits to bring them back to their original value.

I also agree that you should use some of the existing congressional frank money to pay for candidate mailings and not just for incumbent mailings. You should also have voter information pamphlets like the ones that exist in California and New York City.

On the second goal, of limiting the role of interested money, the political party contribution idea would attenuate the relationship between giver and office holder, and therefore is the most important proposal for this goal as well. I also agree that you ought to look at lobbyists' contributions. Many States, and I do not know how you would do it in Washington where you have year-round sessions, simply prohibit fundraising during session. Obviously you are in session all year. That is hard, but you could set calendar restrictions on fundraising. But the most important changes are to raise the seed money contribution limit and to change the way parties relate to candidates. That is it.

Senator MCCONNELL. Professor, I am sorry, but I am going to have to put this in momentary recess or I am going to miss this vote. We will be right back,

Mr. MALBIN. That is okay.

Senator MCCONNELL. John should be back momentarily.

Mr. MALBIN. A recess is fine. We will wait.

[Recess.]

The CHAIRMAN. I apologize for the delay, but this is the life of the institution in which are privileged to serve.

Mr. MALBIN. Senator, I will end by reiterating what I consider to be the two most important things I think you could do positively.

The CHAIRMAN. If you could draw that mike up a little bit.

Mr. MALBIN. I would end by emphasizing the two main things that I think this Committee could do positively. One is to make it easier for people to give seed money. Early money is the most important money. Somebody other than personally wealthy people ought to be able to get large contributions. Second, once the candidates have an opportunity to establish themselves with seed money, then it is up to them themselves to prove that they are viable. If they are viable, let the parties get in, free the parties' hands, but make sure that there is some control on contributions to the parties so that this does not become a back-door way of raising unlimited contributions for the candidates. Those are my most important ideas. I am basically finished with the testimony. I think those are direct ways to affect competition and deal with the relationship between givers and office holders. They are not convoluted like spending limits, which are not likely to achieve what their sponsors want. I think the reigning proposals are more likely to do the opposite if you look at the campaign environment of the future. So I think we are both open to and ready and eager to answer whatever questions you might have.

[The prepared statement of Mr. Malbin follows:]

PREPARED STATEMENT OF MICHAEL J. MALBIN, DIRECTOR, CENTER FOR LEGISLATIVE STUDIES, ROCKEFELLER INSTITUTE OF GOVERNMENT, STATE UNIVERSITY OF NEW YORK AT ALBANY, NY

Mr. Chairman and Members of the Committee:

It is a pleasure to appear before you today. For the record, I am a professor of political science at the State University of New York at Albany and director of the Center for Legislative Studies at SUNY's Rockefeller Institute of Government. However, I am here to offer my own views and not to represent any organization. I am also pleased to be one of the scholars on the Brookings Web Site that Tom Mann has described but I was not asked here for that reason and, as you will see, Tom's opinions and mine are not the same.

Campaign finance is one of those fields in which most of the active participants espouse well known positions that have been declared firmly, with great conviction, for a long time. The debate, to my mind, has become ossified while the world has changed underneath the debaters. In that kind of a situation, it is important to focus on some of the broader questions at issue, instead of to pick at the fine points.

I want to begin by making an analogy to another policy arena with which you, Mr. Chairman, are very familiar, namely, the field of weapons procurement. We can probably make the same analogy to a large number of policy arenas. As you well know, Mr. Chairman, some weapons—and some other policy solutions—keep getting proposed and re-proposed, even though the nature of the threat, or the objective they are supposed to serve, has changed. One political scientist refers to the situation as solutions in search of a problem.

I bring up the analogy because even though it is relevant, it is not close to being perfect. Defense experts may believe DoD has not been reacting adequately to the changed international environment. Nevertheless, everyone in and out of the department is taking the challenge seriously. In contrast, I think people who work on campaign finance simply are not keeping up with the new political environment. The leading reform packages are based on ideas that have not changed much in 20 years. Whatever you may have thought about them then, they certainly are beside the point now.

In my testimony, I shall outline what I consider to be the main problems with the leading proposals and then put some alternative ideas on the table that I think will be useful. An earlier version of some of these arguments appears on the Brookings Web Site.

S. 1219: ASSUMPTIONS AND GOALS

The stated goals the bill sponsored by Senators Feingold and McCain (S. 1219) are (1) to reduce the importance of "interested money" in the legislative process and (2) to improve competition in congressional elections. However, the main thrust of the bills is not aimed directly at either of these goals. The main thrust is to impose spending limits on campaigns, and include just enough incentives to let lawyers claim that the spending limits are voluntary. Setting the legal dispute aside, the most that can be said in favor of spending limits is that they indirectly (and only marginally) address the two stated goals.

Let's look at competition first. I think it is beyond dispute among political scientists that the most important financial fact relating to congressional competition is how much money the challenger has raised. No one to my knowledge has ever refuted or even seriously challenged a stream of political science findings on this point. Political scientists disagree about what might be the best way to get money to challengers. Some favor public funding. I would prefer to increase the role of political parties and raise contribution limits for seed money. But no political scientist questions the central importance of challenger funding to competition.

Political scientists are less unified about some of the nuances in the debate over spending limits. We all agree that too low a limit would inhibit challengers; we disagree over whether any limit ever might actually enhance competition. Even those who think the "right" spending limits might help competition, however, would agree that their effect pales in comparison with getting resources to (or freeing resources for) challengers. Despite this, the bill provides only minimal resources for challengers. It is hard even on the most generous assumptions, therefore, to see it as a bill that has much to do with the goal of enhancing competition.

THE IRONIC IMPACT OF SPENDING LIMITS

The second stated purpose of the bill is to "clean up" the relationship between givers and legislators. Here again, the bill is mostly indirect. I say "mostly" because several of the bills provisions are intended to clean up rough edges and loopholes that have grown up around contribution limits. Provisions relating to soft money and bundling fall under this heading. You can argue the pros and cons of specific provisions put forward for soft money and bundling, but at least these provisions are pointed at the problem they say they intend to address.

But the main method offered for "cleaning up politics" in S. 1219, as well as for enhancing competition, is to limit spending. The argument seems to be that limiting spending will put a lid on the amount of time an incumbent legislator devotes to fundraising and this in turn will limit the debt legislators feel to interest groups. This whole line of reasoning strikes me as dubious. Every contributor who gets in before the spending limit by definition will not be affected by it. More fundamentally, the reasoning focuses only on direct contributions. It assumes that because most spending is now done by the candidates, that's the way it always will be. It assumes that if Congress puts a limit on candidates, the candidates' limit will automatically bring all spending on elections under control.

Of course, you can try to write a law to limit spending by candidates. This has been tried at the presidential level. However, in every election since 1976, the presidential candidates and their supporters have found ever more creative loopholes to exploit, making the presidential limits all but meaningless. I suspect that moving the spending limits down to the congressional level would suddenly give congressional candidates an incentive to raise soft money for their state parties too. Maybe some of the newer activities that involve candidates and parties can be controlled by the law. (We can debate whether it would be desirable to do so.)

But what about activities that are not under the candidates' direct control? Based on the past 20 years, we already know what independent expenditures or voter mobilization can mean: the National Rifle Association spent a total of \$1 million on independent expenditures in behalf of nine Senate Republican candidates during the final month of the 1994 campaign, and organized labor regularly spends millions to mobilize voters. But what about newer forms of activities? You need to be writing laws for the next 20 years and not for the last 20.

Consider just one example. The federal courts have been clear in stating that the First Amendment protects issue education and advocacy. These protections extend to report cards that identify how an incumbent has acted on an issue while in office. Now consider what this does to contribution and spending limits. When I log on to the Internet, one of the direct "click" addresses available through the politics gopher is the Christian Coalition's home page, complete with its "report card" on the 104th Congress. The marginal cost to the Coalition for my receiving this report card is zero.

The Internet almost surely will bring the cost of maintaining far flung political organizations way down. As more people get on the 'Net, it could easily replace at least some uses of direct mail. Clearly, spending limits on candidates will not effect this and other politically effective means of communication. Moreover, the organizations that choose to use those new methods will continue to incur obligations from office holders just as much or as little as they did when they contributed directly.

Question: how would spending limits effect the importance of these kinds of communications? We can safely make two assumptions. The first is that very few campaigns reach a saturation level of political communication. More money, effectively spent, can make at least some difference in most campaigns. Second, we can safely assume that at least some organizations will have both the means and the incentive to stay involved. Nothing about candidate spending limits will change the incentives. As for the means, newer technologies will make it easier and cheaper for organizations to be active, and effective, outside the reach of campaign finance law.

This leads to a strange result. Two of the purposes of spending limits were supposed to be to control candidates' appetites for special interest support and to equalize the influence of the average citizen over public policy. Instead, spending limits would DECREASE the importance of candidate committees and parties—which are the most directly accountable parts of the election picture—while INCREASING the relative importance of poorly disclosed activities by large, nationally organized, politically sophisticated interest groups. This is not a guess. We know enough from the past 20 years to make this prediction confidently. I do not see what positive purposes spending limits might serve that would be important enough to offset this damage.

WHAT SHOULD CONGRESS DO?

The more often I come back to this subject, the more convinced I become of the futility of pursuing a strategy based on regulated spending limits. Contribution limits are relatively straightforward to understand and enforce. But spending limits constantly put you in a position of playing regulatory catch-up. People will always devise new ways around the limits and you will be forced constantly to decide which ones you have to leave alone, for First Amendment reasons, and which you can try to prohibit retrospectively. Meanwhile, the campaign environment will continue to change and you can never catch up. It all strikes me as a waste of your talent and energy.

It would be far more productive for Congress to go directly after the problems it wants to address, instead of using this indirect and unproductive approach. Do you want to enhance competition? For that goal, I would urge you to consider one or more of the following:

- (1) Increase the contribution limit to \$25,000 for the first \$100,000 raised by a House candidate and the first \$500,000 raised by a Senate candidate to make it easier for new candidates to raise seed money. These figures should be indexed for inflation, as should all of the contribution limits that have been frozen since 1974.

- (2) Substantially increase the amount political parties may contribute to and spend on behalf of candidates (see below).
- (3) Reduce the congressional frank by a significant amount and use the savings to pay for two free mailings by each qualified general election candidate.
- (4) Have the government pay for and distribute voter information pamphlets in multiple languages, along the lines of those used in New York City and the state of California.
- (5) Require licensed broadcasters to give free time to qualified general election candidates. There is no need to tie this to spending limits.

Or is the goal to decrease candidates' dependence on "interested money" without taking money out of the system and harming competition? For this, you could consider the following ideas:

- (1) Substantially increase the amount political parties may contribute to and spend on behalf of candidates. This is a two-fer. It helps competition because parties are more likely than any other participants to provide substantial late-campaign help to non-incumbents. Filtering private money through parties also weakens the connection between the private donors and individual legislators.
- (2) However, this last point will only work if parties are prohibited from accepted very large contributions into "soft money" accounts. When very large contributions are permitted, the connection between the giver and party leader or President can be too close. But as long as the maximum size of contributions to the parties are kept under control, there is no reason to be concerned about funds going from the party to the candidate.
- (3) If you are concerned about office holders spending too much time on fundraising in Washington, you can always follow the lead of the states and simply prohibit fundraising during the session, or limit it to a specific time period.
- (4) Finally, if you are concerned about the relationship between campaign giving and legislation, you could consider some kinds of restrictions on contributions by people who register as lobbyists under the new lobby law. If you did consider this, you would need to think about First Amendment issues that I have not thought through fully myself. But the point is that the real issue has to do with the relationship or perceived relationship between Members and individual contributors. That relationship grows out of who contributes and how much; it does not grow out of the candidates' total spending.

The larger point is that there are many direct ways to go after the goals of competition and the relationship between givers and office holders. Of these, I would argue that the most important are, first, to raise the contribution limits for seed money so more viable candidates can establish themselves, and second, to enhance the role that parties can play once candidates have shown they are viable. By comparison, bills that join public financing with spending limits are convoluted, they are not likely to achieve what their sponsors want, and they are backward looking. If anything, they are more likely in the campaign environment of the future to bring about just the opposite of what their sponsors intend.

The CHAIRMAN. Good. Let me just sort of generalize. You are a fast mover. I am just going to ask sort of a general question. I feel a very heavy responsibility as chairman of this Committee to exhaustively as we can analyze all the views on this complicated subject, and we are fortunate to have two individuals today who spent a lot of your careers studying it and writing and speaking to it. Now, speaking only for myself, I do not know exactly where the Committee is going to come out on a number of the positions, but I do not want to be a party to taking to the floor a piece of legislation which has components

that in my judgment and in the judgment of others is clearly unconstitutional. So that I can go back to my state in this debate and say I did my very best on campaign finance reform. I took this bill, you know, as we have to do in politics, but knowing in my heart that I was holding a piece of paper that would be struck down by the federal courts at the first opportunity. I cannot do that. I mean I am in enough trouble as it is trying to be honest with the people now. That gets you into a lot of trouble now and then, but I do not mind it. I am going to weather my way through it.

But I cannot honestly do that, and therefore the constitutionality of these various proposals is of paramount importance to this senator. How do you feel about it? I mean I am not asking you to go into all the constitutionality, but do you think that is a proper position to be taking?

Mr. MANN. I believe that the Constitution is meant to be interpreted not only by the Supreme Court but by the Members of the United States Senate and the U.S. House of Representatives. I think you have a responsibility to make a good faith effort to ensure that any legislative recommendations you make in your committee would meet a reasonable test of constitutionality. That is why I think the ban of PAC's seems self-evidently unconstitutional, and I would be wary about moving forward with that. The other reason to be wary of it is it would probably not reduce the amount of interested money. It just would drive it underground and be less accountable.

The CHAIRMAN. Well, I share that view because I do not want to elevate public hopes that we have solved it with some piece of legislation. Do you have any views on that, Professor?

Mr. MALBIN. I agree wholeheartedly. I think every public official in this country is sworn to uphold and defend the Constitution of the United States.

The CHAIRMAN. That helps me, and I would like to ask one other question, and then I am going to turn this hearing over to my colleague who is indeed the acknowledged expert in this field. I understand that the AFL-CIO has approved a plan to spend \$35 million in 75 congressional races—that averages out to \$467,000 per House race, almost double what the normal challenger spent—in addition to normal union efforts in support of political campaigns. Do you believe the proposals which restrict the bundling of funds and political expenditures of PAC's that leave union activities untouched will imbalance the playing field as it currently stands?

Professor Mann?

Mr. MANN. I suppose I would generalize the point. There is no reason to limit it to the union activity of the AFL-CIO. It is really a point that presumably would include the National Rifle Association and the Christian Coalition and other national interest groups. The reality is that speech is protected, and the court has defined campaign activity as speech, and I think

frankly you are unable to restrict and ill advised to try to restrict these political activities and see them as some nefarious force. You simply ought to acknowledge this is part of what happens in a large heterogeneous democracy such as ours. So rather than looking for restricting them, I think you want to make sure that you are not creating some imbalance by putting restrictions on what the candidates can do that has to then be made up for by other national interest groups.

The CHAIRMAN. Professor?

Mr. MALBIN. As I read the announcement from the AFL-CIO—I may be wrong factually—but I believe the efforts were primarily in the kinds of voter mobilization efforts they have done before. In the past, they have spent something like 25 million. This time it is going to be 35. These are very important. There is no question about it. They are spent on—a lot of it is on presidential effort. The point is that if you limit other people, or take a large number of other givers totally out of the picture, you increase the relative importance of the ones who are left. There is no doubt about this.

The CHAIRMAN. Good. So it comes back to the word imbalance again.

Mr. MALBIN. Yes.

The CHAIRMAN. Simple and understandable by the American people. Professor, I have studied this article entitled "Campaign Finance Reform," and I would like to put in the record.

[The article is included with Materials Submitted for the Record.]

The CHAIRMAN. And I would like to invite you, Mr. Mann, to select one of your pieces such as the record incorporates examples of your very fine writing, both of you.

Mr. MANN. Thank you.

Mr. MALBIN. Thank you.

The CHAIRMAN. Senator, would you kindly conclude the hearing?

Senator MCCONNELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator MCCONNELL. I almost always agree with Professor Malbin and most of the time agree with Tom Mann. I want to thank you for coming again and sharing your views. But I must say, Tom, I was appalled by your recommendation regarding contributions by lobbyists.

Mr. MANN. Well, I expected that, Senator. I was counting on it.

Senator MCCONNELL. You just told us you thought we ought to only do things that are constitutional. Do you think you ought to also only recommend things that are constitutional?

Mr. MANN. Yes. I think there are some constitutional means of accomplishing this objective. Mike has indicated that some of

the states have taken steps to restrict fundraising at certain times and in certain places.

Senator MCCONNELL. Yes. Most of those have not been litigated though.

Mr. MANN. Senator, I accept that. And I would urge you not to send any recommendation forward that does not meet such a test, but at the same time I would urge you not to brush over this conflict of interest problem too quickly. It is at the root of the problem with the public's perception. The public is wrong, by the way, in thinking how money buys votes, but I think we have to deal with this.

Senator MCCONNELL. No, I understand. We ought to legislate then on the basis of perception rather than reality?

Mr. MANN. It turns out conflict of interest is more complicated, and perceptions are relevant in conflict of interest. There is a new book that Brookings has published on congressional ethics by Dennis Thompson that grapples with this, and appearances matter. They matter in professions, in law, in medicine, and steps are taken to deal with those appearances.

Senator MCCONNELL. Then I should have voted for the constitutional amendment to prevent flag burning? That is what the public wants.

Mr. MANN. I did not say you should do what the public wants. I said appearances are important. Those are two very, very different points.

Mr. MALBIN. Senator McConnell, I am not a lawyer. I wonder, though, whether your legal questions apply directly. If a person is a registered lobbyist, representing an interest of someone else for a fee, I wonder whether some of the contribution transactions to people outside of his or her own place of residence are reachable, whether reaching them may be wise or not.

Senator MCCONNELL. I think the answer is probably no. The ACLU, in testimony about President Clinton's proposal to ban contributions by registered lobbyists, said, "Lobbying is both the essence of political speech and association and is specifically protected under the First Amendment as the right of people to petition the government for redress of grievances. The various expressive rights accomplished by that notion are considered indivisible. After all, the First Amendment was fashioned to ensure the unfettered interchange of ideas for the bringing about of political and social change desired by people." And all these are case citations for every one of these points.

"Because lobbying is designed to influence public policy, the speech that is burdened by this proposal is at the heart of the First Amendment's protection," another case cited, "and constitutes the essence of self-government," another case cite. "Moreover, it is wholly at odds with guarantees for First Amendment freedom to place legislative restrictions on those engaged in the discussion of political policy generally or advocacy of the passage of defeat of legislation," another case

cited. "The court's decisions make apparent that these activities involve the highest level of constitutional protection," and on and on.

Now on the conflict of interest issue, Tom, I just want to ask you. You said in your testimony, "other means should be sought for dealing with conflicts of interest that arise when contributors seek legislative remedies and when legislators seek contributions from those with direct interest in legislation."

Okay. Does a retiree have a direct interest in Medicare legislation affecting benefit levels?

Mr. MANN. Absolutely.

Senator MCCONNELL. A homeowner in legislation repealing the mortgage interest deduction?

Mr. MANN. Yes. And I will probably say yes in advance to the next set of examples. Therefore, all Americans in some ways have a direct interest in matters before the body.

Senator MCCONNELL. All right. So it is the act of registering a lobbyist as a lobbyist which creates a kind of constitutional infirmity under which your rights are restricted?

Mr. MANN. There is an asymmetry involved between individuals, rank and file citizens back home, and those who are in direct communication with members. Let me say again (a) I do not want to restrict lobbyists. I want to protect lobbyists from politicians. That is my real objective here, but (b) I fully appreciate the sort of the constitutional issues here. I do not have a solution, but I am urging you rather than to simply deflect, as you can do so skillfully, with the ACLU on this, because there is a very strong response to what I have said, I just plead with you to think through then in other ways how to deal with the problem of conflict of interest.

It is not enough to say we cannot be concerned with appearances. We cannot legislate on the basis of what people subjectively think. In every other sphere of society now, as the ethicists will tell you, there are procedures being developed to deal with these conflicts, and I think Congress has to face them as well. There are special problems here because of the constitutionally protected right of speech, but that just means it is more complicated.

Senator MCCONNELL. Yes. It certainly is because when you start restricting people's rights to participate in politics and their rights to speak, it is a very, very complicated process that fortunately the Constitution will not allow us to do much with. Let me just say in conclusion that I—

Mr. MALBIN. Senator.

Senator MCCONNELL. Yes.

Mr. MALBIN. The Constitution would, and this is a matter of wisdom and it is a matter of the way you hold sessions here, but the Constitution would permit you to restrict dates and locations for fundraising. And so, therefore, to have a party in a hotel downtown for \$500 a plate could be reached.

Senator MCCONNELL. Yes. That would be great for business over in Virginia and Maryland.

Mr. MALBIN. Sure. Fair enough. Fair enough.

Senator MCCONNELL. I think that it would be just as difficult to deal with what you perceive to be the problem here as it would be to enforce spending limits. The Supreme Court has already held constitutional the restrictions on individual's contributions to a campaign, but that deals with the problem. It seems to me it is constitutionally suspect to say a citizen who is not a registered lobbyist can contribute \$500 to his favorite candidate, but a citizen who is a registered lobbyist cannot. Maybe we will pass that someday and maybe we will litigate it. But I would bet you the ranch that the courts will not say that that citizen who is lobbying has fewer rights to participate in politics than the citizen who is not. It is an interesting academic discussion. My view is that—

Mr. MANN. Then let us restrict you instead of the lobbyist in some way. Because I think that is what is really going on—what we are worried about here is there are too many situations where lobbyists are, in effect, told implicitly to pony up and that is very distasteful, and you may be in principle protecting their constitutional rights, but in fact they would love to be freed from that right.

Senator MCCONNELL. So we need to—you sound like Ross Perot—we need to protect these poor lobbyists from these vultures who serve in Congress.

Mr. MANN. That is Ross Perot?

Senator MCCONNELL. I never thought of you as a Congress-basher, Tom.

Mr. MANN. Now I am really hurt.

[Laughter.]

Senator MCCONNELL. All right. Thank you both very much for being here. We appreciate your words of wisdom.

Mr. MALBIN. Thank you.

Mr. MANN. Thank you.

Senator MCCONNELL. The hearing is adjourned.

[Whereupon, at 11:20 a.m., the committee adjourned.]

CAMPAIGN FINANCE REFORM

WEDNESDAY, APRIL 17, 1996

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in Room SR-301, Russell Senate Office Building, Hon. John Warner, chairman, presiding.

Present: Senators Warner, McConnell, Cochran, Ford, Dodd, and Feinstein.

Staff Present: Grayson Winterling, Staff Director; Edward H. Edens IV, Special Assistant to the Chairman; Bruce E. Kasold, Chief Counsel; Virginia C. Sandahl, Chief Clerk; Mary Louise Faunce, Administrative Assistant to the Staff Director; Kennie L. Gill, Democratic Staff Director and Chief Counsel; and John L. Sousa, Democratic General Counsel.

The CHAIRMAN. The committee will come to order. We welcome our two witnesses and other guests here today.

The committee is holding its fourth hearing this year on campaign finance reform. This series of hearings is designed to permit the examination and a very full and complete discussion of all issues on this important subject.

At our previous hearings we heard from several Senators—Senators McCain, Feingold, Thompson, Wellstone, Feinstein and Bradley—about the legislation they had proposed, as well as from Members of the House of Representatives—Messrs. Shays, Meehan and Mrs. Smith—who testified on legislation they introduced in the House of Representatives.

We also heard from distinguished lawyers, who raised serious concerns about the constitutionality of some of the proposed reforms. And therein lies the most difficult—I repeat—the most difficult aspect of this series of hearings. We heard the various aspects of that issue from campaign finance reform public policy institutes, the CATO Institute, and the Heritage Foundation, as well as general calls for significant reform by several advocacy groups.

We have also heard from organizations and individuals on their perspective of campaign finance reform proposals that would eliminate political action committees and the bundling of

funds. One witness suggested we limit the ability of organizations with mandatory membership, primarily unions, from using membership dues to conduct partisan political activities.

At our last hearing we learned about the cost and management problems associated with the proposals that candidates for election be given reduced fee postage in the U.S. mail, and a panel of experts presented us with some thought-provoking ideas that should be considered in any campaign reform evaluation.

Now, today we will continue the examination and discussion of campaign finance reform with testimony about the role of the political parties in campaigns and the effect of the reform proposal on that role. Our first panel features the distinguished Chairmen of the Republican and Democratic National Committees, Messrs. Haley Barbour and Donald Fowler. They will be followed on our second panel by Mr. Robert Bennett, Chairman of the Ohio Republican Party, and Mr. James Brady, President of the Association of State Democratic Chairs.

Other issues still remain before this committee as it relates to this subject, such as taxpayer financing and the concept of free or reduced fee broadcast time. Our next hearing will be on May 8th, at which time we will have representatives from the broadcast industry on the impact of reduced fee broadcasting.

Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

As you just stated, this is our fourth hearing on campaign finance reform this year, and at a previous hearing I spoke at some length about the hearings this committee has held on this subject. I urge that we focus the rest of our hearings on what Congress can do to reform the financing of our political campaigns.

This morning I am pleased to join you, Mr. Chairman, in welcoming Don Fowler, National Chairman of the Democratic Committee, and Haley Barbour, Chairman of the Republican National Committee. I also wish to welcome James Brady and Robert Bennett, spokesmen for the state political party committees.

I look forward to hearing our witnesses' comments regarding the proposals to reform the campaign finance system and the impact those proposals may have on the operation and roles of their respective committees.

I thank you, Mr. Chairman, for your continuing leadership on this issue.

The CHAIRMAN. Thank you very much, Senator FORD.

Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman.

In his prepared statement, one of our witnesses today, the Ohio Republican Party Chairman, observes that "we must have faith in our citizenry . . ." This is an essential point which

touches on a fundamental, though unstated, premise in the drive for increased regulation of campaigns: the notion that we must have less democracy to achieve a better democracy.

Less democracy in exchange for a theoretical utopia of speech limits, regulation and prohibition—this is a twisted reform agenda. Perversely, it is championed by many in the media, an industry grounded in the First Amendment, and advanced by so-called “good” government groups.

Cut through all the rhetoric about special interests, money chase and soft money, and at its core this debate is about democracy, freedom and the Constitution. It is about freedom of speech for candidates and noncandidates. It is about the freedom to participate in politics, collectively and as individual citizens.

Nowhere is this more evident than in the debate over political parties and their freedom to raise and spend on generic and candidate-specific campaign activities. Every bit as damaging to the political process as *de facto* speech limits on candidates would be a successful attempt to federalize political party activity. Bills before this committee such as S. 1219 would severely constrict the parties’ ability to influence elections, which is, of course, the reason they exist.

In my view, and the view of nearly every reputable scholar on the subject that I have encountered, further hamstringing the parties would be a huge mistake. What we ought to do is unshackle the parties so that they can spend more money to promote themselves as vehicles of citizen action, recruit candidates and assist their nominees.

The highly respected and astute political columnist, David Broder, stated a few years ago in *The Washington Post*, “the only institutions in America that have an intrinsic interest in electing nonincumbents to office” are political parties. Mr. Broder advocated easing the current restrictions on party fundraising and spending on activities he asserted are “at the heart of electoral democracy . . .”

In this vein, Republicans have long advocated and put forth proposals to allow the parties to provide seed money to challengers, matching the first \$100,000 they raise. And the Republican party is presently engaged in a Supreme Court case to get the current coordinated limits lifted. I am a co-signatory of an amicus brief in support of the Republican party in that case. Others signing on to that brief include former Senator and Democratic presidential candidate Eugene McCarthy.

Professor Larry Sabato, a distinguished scholar at the University of Virginia, has exhaustively studied campaign finance and authored numerous articles and books on the issue. It is my hope that he will be able to testify before the committee during this series of hearings.

The CHAIRMAN. That will be done.

Senator MCCONNELL. In his absence, I will quote from a book he wrote entitled “Paying for Elections.”

He said, "There are no more unappreciated institutions in American life than the two major political parties. Often maligned as the repositories of corrupt bosses and smoke-filled rooms by average citizens, as well as by many politicians, the parties nonetheless perform essential electoral functions. Not only do they operate (in part) the machinery for nomination to most public offices, the two parties also help counteract the powerful centrifugal forces in a country teeming with hundreds of identifiable racial, economic, social, religious and political groups. The parties are often accused of dividing us; to the contrary, they assist in uniting us as few other institutions do. They permit elected executive, leaders, and managers to be successful by marshaling citizens around a common standard that can be used to create and implement a public agenda."

An objective review of America's political process can only conclude that the political parties are a stellar example of what is good with the system. I join with our witnesses here today who believe that true reform would include strengthening our political parties by letting them do more and spend more in elections.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. You have spent a great deal of your years as a public servant studying this subject, and we all recognize your knowledge on it.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

This is not a formal speech, but I was originally on the McCain-Feingold bill, and I dropped off because it would outlaw bundling. I would be very hopeful that in your remarks each one of you would address this process. It would effectively eliminate "Wish Lists" on the Republican side and "EMILY's List" on the Democratic side.

I am one who happens to believe that an organization, a group of people and individuals, should have the ability to make small contributions and say "I will put them together, we will put them together, and send them to your candidate." I think it's healthy for the process to have people that believe in a common cause to be able to contribute that way. So I would appreciate very much comments that either one of you gentlemen would care to make on that subject.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cochran.

Senator COCHRAN. Mr. Chairman, let me commend you for conducting this series of hearings on campaign finance issues. This is the fourth hearing in the series, and it is certainly very timely, very important. I hope it will lead to a better understanding of the issues, both here in the Senate and throughout the country.

Let me also, Mr. Chairman, take this opportunity to extend a very special welcome to my good friend and fellow

Mississippian, Haley Barbour. As Chairman of the Republican Party, he has reflected great credit on our State. I can remember, when I was first elected to Congress, he was simply a precocious member of the state party staff in Mississippi. But we were very proud of him—

Senator FORD. I'm not sure what that word means.

Mr. BARBOUR. I think it means "fast", Senator. I'm not sure.

[Laughter.]

Senator COCHRAN. He was fast on his feet, both on the football and baseball fields, and he also brought a great deal of expertise and hard work and commitment to the development of the party in our State. We continue to be very proud of him and the work he does.

Thank you very much.

The CHAIRMAN. Thank you, Senator.

In our audience today is a group of students from Woodbury Forest, a school in Virginia. I think it's important that students from all over America, as often as possible, come and learn about the processes here in the Congress. I think this will be a particularly informative one this morning.

I would just like to put into the record a short biography of both of our witnesses, and would say in doing that that America is fortunate to have two such dedicated individuals, thoroughly skilled and trained in all aspects of the American political system. Maybe not totally objective, but nevertheless, you are seasoned veterans and we're fortunate that this Nation does have that type of leadership in our parties.

My concern about parties is that often some of the finest and best do not accept the call and the challenge to join and take an active role. Both of you, I hope, can turn that around and inspire the most qualified Americans to join in party leadership.

We will lead off with you, Mr. Barbour.

[The biographies of Mr. Barbour and Mr. Fowler are included in materials submitted for the record.]

TESTIMONY OF A PANEL CONSISTING OF HALEY BARBOUR, CHAIRMAN, REPUBLICAN NATIONAL COMMITTEE, WASHINGTON, DC; AND DONALD FOWLER, NATIONAL CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE, WASHINGTON, DC

Mr. BARBOUR. Mr. Chairman and members of the committee, first let me express my appreciation for the opportunity you have afforded me to testify as an advocate for strong political parties.

A political party is an association of like-minded individuals who debate issues, attempt to influence government policies and help elect candidates to local, state and Federal offices. Parties also provide voters a starting point to begin their evaluation of the candidates and what these candidates would do if elected. In short, a political party is the epitome of a First Amendment

association which has been given a unique and responsible role in our democratic political process.

The Republican party is a grassroots, bottom-up organization. It is organized as a federation of state parties. The Republican National Committee represents millions of Republican voters, hundreds of thousands of Republican volunteers, scores of thousands of Republican activists who choose their representatives on the RNC, and thousands of officeholders at the local, State and Federal level. The RNC is an unincorporated association. There is no "RNC Inc."

Some have the notion that the RNC is narrowly focused in its business on Federal activity. That is simply wrong. As I have noted, the RNC is not just the party for Republican congressmen and Senators. The Republican National Committee is the official party organization for Republican governors, legislators, county commissioners, mayors, city councilmen, and all other state and local Republican officials and candidates.

The RNC has no problem with the proper regulation of its Federal election-related activities through Federal regulation or Federal legislation. Federal regulation of state and local activities, however, is another matter. It would be altogether fitting and proper for Congress to require an allocation of expenditures for party expenditures that impact on federal, state and local candidates, and for Congress to prohibit the expenditure of funds not subject to the limitation of the Federal Election Campaign Act to pay for the portion of the cost allocated to the Federal candidates.

Indeed, the Federal Election Commission has already done so. The Republican National Committee, however, opposes the Federal Government's preemption of state law and its usurpation of the state's authority to conduct and regulate elections of its state and local officials. This would be the practical effect of any ban on the use of non-federal money by party committees. Regrettably, this has been a centerpiece of a number of campaign finance proposals.

Nonfederal money refers to so-called "soft money", legally raised to support nonfederal candidates and the non-federal share of party activities. Let me emphasize, any prohibition against the use of party "nonfederal dollars" for legitimate nonfederal purposes is bad policy and the Republican National Committee opposes it.

Forty-five of the 50 States elect their governors in even-numbered years, on the same day as the Federal elections. State legislative elections have a similar overlap. Skeptics ignore these facts and argue that any kind of "nonfederal money" financial activity is merely back-door support for our presidential nominee or congressional candidates. That argument is preposterous.

In the 1994 election cycle, the Republican National Committee spent over \$23 million in nonfederal funds to support

state and local candidates and the nonfederal activities of state and local party committees and itself. All of these nonfederal dollars were spent under the legal requirements of each state in which they were spent.

By the way, Mr. Chairman, for the record, only 25 percent of the total revenue of the Republican National Committee in the 1994 election cycle was in nonfederal contributions. Over 70 percent of our total revenue came from contributions of \$100 or less. Every penny of the RNC's nonfederal revenue is disclosed as to how and when it was raised, and how, when and for what purpose it is distributed or spent. Do not confused this so-called "soft money" with "street money". There is total disclosure under current law of every penny of RNC nonfederal dollars. Additionally, every penny of RNC money contributed or transferred to state and local candidates or party committees is legal under the laws of the state in which those campaigns occur. The Republican National Committee does not think the Federal Government has or should usurp the authority of the individual states to authorize the raising or the expenditure of funds in campaigns for those states own state and local offices. Many states have very stringent campaign finance laws, and the national parties must abide by those laws as their activities relate to state elections.

I am sure, Mr. Chairman, that you have worked with Governor Allen, with Republican legislators and county and municipal officials in Virginia. I'm sure all of you do that. The vertical, party relationship among Republican elected officials, at the various levels of government, is important. Both politically and governmentally, it is important that the tie between Federal officials and state and local officials within the party is not broken.

But the practical effect of any congressional ban on the use of nonfederal dollars would largely sever the tie between the national party and our state and local parties and elected officials.

Now, not only would a ban on raising and spending nonfederal dollars preempt state law and sever the tie between the national parties and their state and local party organizations, it does nothing about the real problem. The real problem is nondisclosed, nonparty soft money. Perversely, the effect of limiting the parties further would be to increase the power and influence of special interest groups not subject to the law. The more political parties are cut out of the election process, the more potential there is for special interests to control the outcome of elections and to influence policy agendas. That is not what should result from campaign finance reform.

Allow me to give you a couple of examples of how special interest money has pervaded recent elections. The amount of money already spent by special interests on negative advertising against Congressman Randy Tate of Washington State amounts

to more than Congressman Tate spent for media in his campaign when he was elected in 1994. Also, in the recent special election for the United States Senate in Oregon, Gordon Smith felt the impact of special interest money. Although both campaigns—Senator Wyden’s campaign and Gordon Smith’s campaign—spent about the same amount of money on media, about \$1.1 million each, Ron Wyden’s campaign received the additional benefit of more than \$850,000 spent on media advertising by special interest groups, mostly attacking Gordon Smith.

I am sure the members of this committee have read or heard about the AFL-CIO’s multimillion dollar effort to elect Democrats. The AFL-CIO itself has announced it will spend \$35 million to try to buy back Democratic control of the House for the Democrats this year. They are getting the money for this massive, partisan campaign to defeat Republicans through compulsory union dues, even though 40 percent of their membership voted Republican in 1994.

Now, to fund this unprecedented political undertaking, the AFL-CIO leadership rammed through a resolution at its convention last month that requires members of the affiliated unions to pay a \$25 million surcharge in union dues for next year. This surcharge, which was imposed beginning April 1, 1996, is an involuntary 36 percent increase in union dues for each of the AFL-CIO’s 13.1 million union members.

This \$25 million is only part of the aforementioned \$35 million that labor has publicly announced they will spend on their House effort, and it is also only part of a greater union expenditure for other races. It also comes on top of more than \$20 million spent last year to attack the balanced budget and Republican Members of Congress, all paid for with compulsory union dues.

A gross injustice is being visited upon the 40 percent of union members who voted Republican in 1994. Imagine that you’re a rank-and-file union member who voted for a Republican Congressman and/or Senator. Now comes the hand of the union boss dipping into your pocket, taking your hard-earned money to defeat the person you voted for. It is unconscionable.

No union member should be forced to make compulsory campaign contributions to support any candidate or issue unless they freely choose to do so. This is the foundation of our constitutional form of government and the First Amendment freedoms we all enjoy as citizens. To be forced, as a condition of employment, to do otherwise, is wrong. But that is exactly what is happening here. And furthermore, it has to be emphasized that none of this spending of compulsory union dues is disclosed to the public or reported by the unions.

Genuine campaign finance reform requires an end to the use of compulsory union dues and full disclosure of all funds that unions spend for political activity. Both parties and candidates

fully report, but the unions do not. This is campaign finance reform you should adopt.

The AFL-CIO's public plan is to spend \$35 million to defeat 73 Republicans and to put Democrats back in control of the House. That is an average of \$479,000 per race. In 1994, the average House candidate only spent \$409,000. We're not talking about an incremental increase. We're talking about one labor organization, through compulsory union dues, spending more to elect their favorite candidates than the average candidate spent. All party committees, all party committees combined, can legally only spend about \$70,000 to help a House candidate of its party.

More importantly, how can you favor campaign spending limits when special interests can and do pour hundreds of thousands or millions of dollars to defeat a candidate? Spending limits would be grossly unfair to the targeted candidates, but would also greatly increase the influence and power of special interests.

Senator Feinstein asked about bundling. Let me say that I am not opposed to bundling at all. Contributions that are raised and bundled together and sent are all reported. As long as they are reported from their source, reported as to who the actual donor is, then I think that disclosure is what ought to be done. And like you, participatory politics is something that I am very favorably disposed toward. Many people don't have time to knock on doors or volunteer. The only way a lot of people can help is write a check, a small check, big check, whatever.

I do think it would be wrong to allow some to bundle and not others. I mean, it would be very unfair to carve out an exemption for favored special interest groups so that they could bundle and not allow everybody to.

In closing, Mr. Chairman, as you and the committee contemplate amendments to the Federal campaign laws, I would like to leave you with these thoughts. Campaign finance laws should result in campaigns and elections being more open, fair, and more competitive. Parties should be recognized for the unique role they play in this process.

The reasons to tread warily in limiting the First Amendment rights of free speech and free association as they relate to campaigns are many. One is particularly overlooked, and that is the practical effect of such things as spending limits and even contribution limits on the body politic.

Americans get their political and campaign information almost exclusively from three sources: the campaigns and parties, special interest groups, and the news media. As government limits or reduces the ability of campaigns and parties to communicate directly with the public, it results in more control over the flow of political and even public policy information being given to the special interests and the news media.

Parties and campaigns have no right to a monopoly on political debate. Special interests have a constitutionally protected right to speak and be heard in this debate, and, of course, the news media's right to observe, report and comment is also protected. But if the goal of campaign reform is to reduce the power and influence of special interests, limiting or reducing the ability of campaigns and parties to communicate is 180 degrees off the mark, for the result would be to increase the power and influence of special interests, whose funding and spending are largely undisclosed and totally unlimited, and to give more control over the flow of information to the news media. That is not what the American people have in mind when they talk about campaign finance reform, and it is emphatically not what the political process needs.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Barbour follows:]

PREPARED STATEMENT OF HALEY BARBOUR, CHAIRMAN, REPUBLICAN
NATIONAL COMMITTEE, WASHINGTON, DC

Mr. Chairman and Members of the Committee, I want to express my appreciation for the opportunity you have afforded me to testify as an advocate for strong political parties. I know many Members of this Committee have been and continue to be committed to preserving and, more importantly, strengthening political parties and commend this Committee for taking time to focus on the important role political parties play in the American political process.

A political party is an association of like-minded individuals who debate issues, attempt to influence government policies and help elect candidates to local, state and federal office. Parties also provide voters a starting point to begin their evaluation of the candidates running under their party banner and what these candidates would do if elected. In short, a political party is the epitome of a First Amendment association which has been given a unique and responsible role in our democratic political process.

The Republican Party is a "grassroots", bottom up organization. It is a federation of state political parties. It is directed from the local level, not from the top down. This is evidenced by the creation of the Republican National Committee (RNC) which is responsible for the management of the Republican Party nationwide.

The Republican National Committee represents millions of Republicans voters, hundreds of thousands of Republican volunteers, scores of thousands of Republican activists who choose their representatives on the RNC and thousands of officeholders at the local state and federal level. As the evidence suggests, the RNC itself, is a broadbased, grassroots organization.

The RNC is an unincorporated association. There is no "RNC Inc." It is re-established, recreated every four years by the elected delegates to the Republican National Convention and operates under rules adopted by those convention delegates for the next four years. These RNC Rules remain in effect until modified by the delegates at the next Republican National Convention. The Rules of the Republican Party as adopted by the 1992 Republican National Convention held in Houston, Texas in 1992 are currently in effect and will be until the 1996 Convention in San Diego, California.

The RNC consists of one hundred and sixty-five Members, including a national committeeman and national committeewoman elected in each of the 50 states and territories and the District of Columbia along with the chairman of each state Republican party.

Under its Rules, the RNC is required to meet at least twice a year to conduct any necessary business. At these RNC meetings issues are debated, strategies are

discussed on how to best influence government policies and how to elect Republicans at all levels.

The notion that this RNC business is narrowly focused on federal activity is simply wrong. As I have said, the RNC is not just the party for congressmen and senators. The Republican National Committee is also the official party organization for Republican governors, legislators, county commissioners, mayors, city councilmen and all other state and local Republican officials and candidates.

The RNC has no problem with the proper regulation of its federal election-related activities through federal legislation or rulemaking. The regulation of state and local activity, however, is another matter. It would be altogether fitting and proper for Congress to require an allocation of expenditures for party expenditures that impact on federal, state and local candidates, and for Congress to prohibit the expenditure of funds not subject to the limitation of the Federal Election Campaign Act to pay for the portion of the cost allocated to the federal candidates. Indeed, the Federal Election Commission has already done so. The Republican National Committee, however, opposes the Federal Government's preemption of state law and usurpation of the state's authority to conduct and regulate elections for its state and local officials. This would be the practical effect of any ban on the use of non-federal money by party committees. This has been a centerpiece of many campaign finance proposals.

Non-federal money refers to so-called "soft money" legally raised to support non-federal candidates and the non-federal share of party activities.

Any prohibition against the use of party "non-federal dollars" for legitimate non-federal purposes is bad policy, and the Republican National Committee opposes it.

Forty-five of the 50 states elect their governors in even-numbered years on the same day as the federal elections. State legislative elections have a similar overlap. Skeptics ignore these facts and argue that any kind of "non-federal money" financial activity is merely backdoor support for our presidential nominee or our congressional candidates. This argument is preposterous. Just ask the fourteen governors elected from 1993 through 1995, 11 in 1994 alone, giving the Republicans control of 31 Executive Mansions. Ask the 469 Republicans elected to state legislatures in 1994, giving Republicans new majorities in 19 legislative bodies in 18 states, so today, for the first time in two generations, most state legislative chambers have GOP majorities. These legislative wins enable 15 of our Republican Governors to work with both houses of their legislatures controlled by Republicans. Our success and the RNC's effort extended down the ticket, and we made major gains in other state constitutional offices in 1994 including a net gain of 8 Lt. Governors, 7 Attorneys General, 7 Secretaries of State and 8 State Treasurers. The RNC primarily spent non-federal dollars to accomplish this.

In the 1994 election cycle, for example, the RNC spent over \$23 million in non-federal funds to support state and local candidates and the non-federal activities of state and local party committees and itself. This amounted to millions of dollars directly spent on the campaigns of Republican gubernatorial candidates and state legislative candidates. These non-federal dollars were spent simultaneously with the RNC's federal dollar effort to financially support the successful "Republican Revolution", and to become the majority Party in the United States Congress. We plan to match this non-federal support, if not exceed this funding in 1996. These figures do not include the millions of dollars spent by the RNC on behalf of gubernatorial and state legislative candidates in the non-federal election years of 1993 and 1995. All of these "non-federal dollars" were spent under the legal requirements of each state.

By the way, Mr. Chairman, for the record, only twenty-five percent of the RNC's total revenue in the 1994 election cycle was in non-federal contributions. Over seventy percent of RNC revenue came from contributions of \$100 or less. In 1993, 90 percent of revenue was made up of FEC dollars while in the '93/'94 cycle less than 1 percent came from PAC's. Even though non-federal dollars make up a relatively small percentage of RNC revenue, they were indispensable in supporting our non-federal candidates and our non-federally related programs.

Every penny of RNC non-federal dollars revenue is disclosed as to how and when it is raised and how, when and for what purpose it is distributed. Do not confuse the so-called "party soft money" with "street money". There is total

disclosure under current law of every penny of RNC non-federal dollars. Additionally, every penny of RNC money contributed or transferred to state and local candidates or party committees is legal under the laws of the state in which those campaigns occur. The Republican National Committee does not think the Federal Government has or should usurp the authority of the individual states to authorize the raising or the expenditure of funds in campaigns for state and local office.

Many states have very stringent campaign finance laws, and the national parties must abide by those laws as their activities relate to state and local elections. One state, however, has no right to impose its laws on another state, which may choose to have an entirely different set of campaign finance laws. And the Federal Government has no business dictating the campaign finance laws affecting state and local elections in either of those states or in any other.

How can the Federal Government justify making the contributions and expenditures of the state party on behalf of its candidate for governor for the purposes of voter registration subject to federal law? What about county parties? Would county party voter registration efforts be subject to the limitations of the state party and the prohibitions against the national party? Why would the Federal Government and Federal Election Commission have any authority to limit contributions to state parties, if those contributions are to be used to affect state and local elections? Why would the Federal Government have any right to limit state party fundraising or expenditures for the purposes of voter registration?

I am sure, Mr. Chairman, that you have worked with Governor Allen, with Republican legislators and county and municipal officials in Virginia. The vertical, party relationship among Republican elected officials at the various levels of government is important. It is important not just in theory but in practical effect. Witness the tremendous influence our outstanding Republican governors have had on the congressional agenda of the new Republican majorities in Congress. Witness the successful drive for a prohibition to stop unfunded mandates from being imposed by the Federal Government on state and local governments. Witness the reform of welfare by converting federal expenditures for most welfare programs to block grants.

Both politically and governmentally it is important that the tie between federal officials and state and local officials within the party not be broken.

The practical effect of any Congressional ban on the use of "non-federal dollars" would largely sever the tie between the national party and our state and local parties and officials. Many states choose to allow corporate contributions and individual contributions in excess of the Federal Election Campaign Act limits to candidates for state and local office. Contributions to state and local candidates and party committees by the national party from funds which are raised and distributed in compliance with state law, even though those funds would not be eligible for use on behalf of candidates for federal office, are legal and proper under the laws of such states, and a preponderance of our contributions to state and local candidates and parties are derived from such funds, where allowed.

The RNC as a nationwide, grassroots, political association, has and is committed to continue to support Republican election activity at *all* levels. This includes not only giving direct financial support to our candidates to the extent allowed by federal, state and local laws, but also through voter registration efforts, absentee ballot programs, list development projects as well as through other voter programs and party building activities.

Many ignore these facts and attempt to categorize all national party expenditures as federal. They also want to view all state and local party generic voter programs for any election where both federal and non-federal candidates are on the ballot as exclusively subject to federal spending restrictions. As a result, they would require all costs associated with these activities to be paid with contributions raised under federal campaign finance laws. These "reformers" would totally ban the use of non-federal dollars to fund the non-federal portion of such expenses. If this kind of a measure were adopted it would result in an unwarranted federal intrusion into state activity and would be constitutionally suspect.

Not only would a ban on raising and spending non-federal dollars preempt state law and sever the tie between national parties and their state and local

candidates and party organizations, it does nothing about non-disclosed, non-party soft money. Perversely, the effect would be to increase the power and influence of special interest groups not subject to the law. The more political parties are cut out of the election process the more potential there is for special interests to control the outcome of elections and to influence policy agendas. This is not what should result from campaign finance reform.

Allow me to provide a couple of examples of how special interest money has pervaded recent campaigns. The amount of money already spent by special interests on negative advertising against Congressman Randy Tate of Washington amounts to more than Congressman Tate spent for media in his campaign when he was elected in 1994. Also, in the recent special Oregon Senate election, Gordon Smith felt the impact of special interest money. Although both campaigns spent approximately \$1.1 million on advertising, Ron Wyden's campaign received the additional benefit of more than \$850 thousand spent on media advertising by special interest groups, mostly attacking Smith.

I am sure the members of this Committee have read or heard about the AFL-CIO's multimillion dollar effort to elect Democrats. The AFL-CIO has announced it will spend \$35 million to try to buy back control of the House for Democrats this year. They are getting the money for this massive, partisan campaign to defeat Republicans through compulsory union dues, even though 40 percent of their membership voted for Republicans in 1994.

To fund this unprecedented political undertaking the AFL-CIO leadership rammed through a resolution at its convention last month that requires members of its affiliated unions to pay a \$25 million surcharge in union dues for next year. This surcharge, which was imposed beginning April 1, 1996, is an involuntary 36 percent increase in union dues for each of its 13.1 million union members. This \$25 million dollars is only part of the aforementioned \$35 million House effort, and only a part of a greater union expenditure for other races. It comes on top of the \$20 million spent last year to attack the balanced budget and Republican Members of Congress, all paid for with compulsory union dues.

A gross injustice is being visited upon the 40 percent of union members who voted for Republicans in 1994. Imagine that you are a rank and file union member who voted for a Republican Congressman and/or Senator. Now comes the hand of the union boss dipping into your pocket taking your hard-earned money to defeat the person you voted for. It is unconscionable.

No union member should be forced to make compulsory campaign contributions to support any candidate or issue unless they freely choose to do so. That is the foundation of our constitutional form of government and the First Amendment freedoms we enjoy as citizens. To be forced, as a condition of employment, to do otherwise is wrong. But that is exactly what is happening here. Further, none of this spending of compulsory union dues is disclosed to the public or reported by the unions.

Genuine campaign finance reform requires an end to the use of compulsory union dues and full disclosure of all funds that unions spend for political activity. The parties and candidates fully report but unions do not. This is campaign finance reform you should adopt.

The AFL-CIO's public plan is to spend \$35 million to defeat 73 Republicans and put Democrats back in control of the House. That is an average of \$479,000 per race. In 1994, the average House candidate spent about \$409,000. All party committees combined can legally spend only about \$70,000 to help one of their House candidates.

More importantly, how can you favor campaign spending limits when special interests can and do pour in hundreds of thousands or millions of dollars to defeat a candidate? Spending limits would be greatly unfair to the targeted candidates but also would greatly increase the influence of special interests.

As you know Mr. Chairman, many in Congress were concerned that the federal campaign finance laws, adopted in the 70's were smothering grassroots participation in federal elections. As a result, when the law was amended in 1980 one of the primary goals of the legislation was to revitalize grassroots party participation. To some degree that effort has been successful but much more needs to be done to enhance the ability of parties at all levels, national, state and local, to

support their candidates and party membership. We must recognize parties' unique and necessary role in our political process. What is disheartening to me, however, is that we fail to learn from past mistakes by over regulating and restricting the political speech of our party organizations.

Although the law has not been amended in 15 years, the Federal Election Commission continues to churn out unnecessary and overly burdensome regulations. It forces political committees like ours to bear the additional cost of litigation expenses in order to challenge these overbroad and sometimes constitutionally suspect rules. The alternative would be to limit our political speech. Frequently, we are required to spend additional party funds if we attempt to comply with these unnecessary rules.

Currently, for example, the RNC is litigating the FEC's newly revised "best efforts" regulations. These regulations attempt to set FEC guidelines on how political committees are to comply with the law's requirement to obtain certain contributor information. The RNC fully endorses full disclosure and attempts to comply with the statutory mandate to obtain contributor information. We strongly believe, however, that the FEC's approach is in direct conflict with legislative intent. We also argue that the FEC rule actually discourages compliance with the "best efforts" requirement.

At the same time the RNC is litigating this issue, however, the Commission has brought an enforcement action against the RNC for not complying with its new rule, even though the RNC has one of the best, if not the best, contributor disclosure rate of any party committee.

We encourage this Committee to correct such administrative abuses through appropriate oversight of the FEC while being sensitive to its status as an independent regulatory agency. The RNC also encourages this Committee to recommend to the Congress legislative amendments when necessary to prevent the FEC's unnecessary overreaching into the affairs of party committees.

I would like to re-emphasize that the RNC is a grassroots association established to elect candidates, to facilitate the exchange of ideas, debate issues and to effect government policies at all levels. Political parties are unlike any other kind of association. Given their unique role and responsibility in our democratic process, Congress should not only be cognizant of that distinction but should make every effort to strengthen the political party process. Congress must actively affirm the fundamental First Amendment right to associate and to speak through political parties.

Mr. Chairman, as you and this Committee contemplate amendments to federal campaign laws, I would like to leave you with these closing thoughts. Campaign finance laws should result in campaigns and elections being more open, fair and more competitive. Parties should be recognized for the unique role they play this process.

The reasons to tread warily in limiting the first Amendment rights of free speech and free association as they relate to campaigns are many. One is particularly overlooked, and that is the practical effect of such things as spending limits and even contribution limits on the body politic.

Americans get their political and campaign information almost exclusively from three sources: the campaigns and parties; special interest groups; and the news media. As government limits or reduces the ability of campaigns and parties to communicate directly with the public, it results in more control over the flow of political and even public policy information being given to the special interests and the news media. Parties and campaigns have no right to a monopoly on political debate. Special interests have a constitutionally protected right to speak and be heard in this debate, and, of course, the news media's right to observe, report and comment is also protected. But if the goal of campaign reform is to reduce the power and influence of special interests, limiting or reducing the ability of campaigns and parties to communicate is 180 degrees off the mark; for the result is to increase the power and influence of special interests, whose funding and spending are generally undisclosed and unlimited, and to give more control over the flow of information to the news media. That is not what the American people want, and it is not what the political process needs.

Mr. Chairman, thank you again for this opportunity.

Senator MCCONNELL. (Presiding.) Chairman Fowler.

TESTIMONY OF DONALD L. FOWLER, NATIONAL CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE, WASHINGTON, DC

Mr. FOWLER. Thank you.

Mr. Chairman and members of the committee, I am delighted to appear before you today to discuss the issue of campaign finance reform.

President Clinton has made clear his strong commitment to reforming our campaign finance system. We are proud of that commitment and of the hard work the President has already put into this challenging endeavor. Together, with lobbying and ethics reforms, on which the administration and the Congress have already made so much progress, reforming the campaign finance system is something we have to do as part of the massive task of restoring the confidence of ordinary citizens in the institutions of our government.

Democracy does not and cannot work when vast numbers of people believe the government no longer belongs to them. For these reasons, we support S. 1219, the McCain-Feingold bill, as a bipartisan framework for campaign finance reform. Through enactment of McCain-Feingold, we can achieve meaningful campaign finance reform while preserving and enhancing the role of political parties.

Let me offer some thoughts about the need to strengthen political parties. Although I am here as National Chairman of the Democratic National Committee, I view these issues from the perspective of my own experiences—as an “outside the beltway” citizen, who has long been interested in and involved in the political process and, most of all, as someone who has spent 30 years working at every level of party organization. It has been my privilege to serve over those years as chairman of my own state party in South Carolina, and for almost 25 years as a member of the Democratic National Committee.

During those years, I have witnessed, as all of us have, a significant weakening of the parties as institutions and a decline in their role in the American political process. It used to be that the parties were one of the key means by which citizens felt connected to the people who represented them. Through precinct and neighborhood organizations, ordinary citizens were directly involved in the workings of the party. Local party officials were in touch with the citizens and, in turn, reflected their views and needs to the party hierarchy and elected officials. Because parties provided many of the resources their candidates needed to get elected and re-elected, candidates were directly dependent on parties and, once in office, felt a responsibility to the party leadership in the Congress and legislative bodies. The result was

a linkage between the people, the party and elected officials that has been sorely lacking in recent years.

There are many reasons for the decline of political parties. Volumes have been written about this subject. One key factor, to be sure, is the dominance of television. Another is the emergence of other technologies that bypass human organizations. Campaigning used to be a retail business in which parties played a central role in linking people with their government, by performing many basic public and political functions, including voter registration, voter persuasion, and get out the vote.

Television shifted campaigning to a business of wholesale, mass communications in which each candidate is required to formulate her own message, to create her own organization, and to raise her own substantial funds to get the message on television. And so we have seen candidates increasingly forced to act as individual political entrepreneurs, less and less connected to political parties.

It is not surprising, and no accident, that the shrinking role of parties has been accompanied by growing alienation of the American people from and cynicism about politics and politicians. The linkage, the involvement, once provided by parties is missing. And into the vacuum created by this shrinkage have come any number of institutions, primarily special interest groups and independent political consultants of all sorts, who now play the key role in brokering the relationships between the citizens and their elected officials. It is these special interest groups that now represent, or purport to represent, various segments of the population to Members of Congress and legislators at all levels of government.

Let me state emphatically that if this entire trend has been an unhealthy one for our democracy—and I believe that it has—then surely part of the solution is to find ways to strengthen political parties as institutions and to enhance and expand their role in American political life.

Part of that burden falls on the party organizations themselves. And in that regard, I am proud to say that our General Chairman, Senator Chris Dodd, and I have made it a priority to begin the business of rebuilding the Democratic party at the grassroots. We are intensively involved right now in building and developing a stronger staff, improving our technology and strengthening the infrastructure of our state party organizations. We have initiated a new national precinct organization program that I believe will be the first step in getting ordinary citizens in their neighborhoods involved in the actual work of the Democratic party.

We can already point to one significant accomplishment in this respect, which is the development of a model that we call the "Coordinated Campaign." Beginning in the 1990 election cycle, and increasingly since then, the National Democratic party has made it a priority for our state parties to create and carry out

plans to perform the core functions of voter registration, voter identification, voter contact, and get out the vote jointly on behalf of Democratic candidates up and down the ticket.

These coordinated campaigns make use of the current legal ability of state parties to conduct grassroots volunteer activities on behalf of Federal candidates without counting against contribution and expenditure limits. Coordinated campaigns have been extremely successful, not only in getting our candidates elected, but in unifying candidates around common messages and themes and making the parties, as institutions, once again a principal vehicle of support for candidates and, thus, critically important players in the system.

With this background, let me turn to some fundamental principles that I believe should guide the Congress in formulating campaign finance reform legislation.

As the President has articulated, real campaign finance reform must focus on four objectives: first, limit campaign spending; second, restrict the role of special interests, including PAC's; third, open up the airwaves to all viable candidates; and fourth, ban the use of soft money, directly or indirectly, in Federal campaigns.

As you know, Mr. Chairman, the President has expressed his support for S. 1219, the McCain-Feingold bill, s the bipartisan framework for accomplishing meaningful campaign finance reform. I am pleased to note that this legislation is also cosponsored by our General Chairman, Senator Dodd.

The McCain-Feingold bill would effectively serve the major goals of campaign finance reform as outlined by President Clinton. First, it would limit campaign spending. The bill would encourage candidates to observe voluntary spending limits in exchange for reduced rate broadcast time and low-cost mailing rates, and by raising contribution limits for a complying candidate facing a noncomplying opponent.

Second, McCain-Feingold would restrict the role of special interests by banning political action committee contributions to candidates.

Third, the bill would open up the airwaves by offering reduced rates for broadcast time to candidates complying with the spending limits.

Finally, the bill would ban the use of soft money used to support Federal candidates. Currently, Federal candidates may not receive or spend soft money in their campaigns. McCain-Feingold would add a provision prohibiting national parties from raising or spending soft money for their operations. It would also prohibit state parties from spending soft money for generic campaign activity and for any portion of candidate-specific activities that affects Federal candidates. The bill would, however, permit state parties to use nonfederal funds, as permitted by state law, for a portion of their

administrative expenses, for party meetings and conventions, and for activities affecting only state and local candidates.

Under McCain-Feingold, the state parties would continue to be able to conduct an unlimited amount not only of generic voter registration and get out the vote activity, but also of candidate-specific activities using volunteers—the distribution of literature, signs and other materials, mailings handled by volunteers, and for presidential campaigns, get out the vote phoning, door to door canvassing, and similar activities.

These provisions would enhance the role of the parties in several ways. First, with PAC contributions eliminated, the role of the parties' activity on behalf of candidates would become relatively more important. The resources the parties could contribute would consist not only of cash expenditures subject to section 441a(d) limits, but also volunteer grassroots activities which would remain unlimited. These would represent a greater proportion than they now do of the candidate's total resources.

Second, with spending caps imposed on candidates, candidates would require less total contributions than they do now, and more federally-permissible funds would be freed to be contributed to political parties—national, state and local.

Third, the spending caps would mean that parties would be spending more than they now do relative to candidates, both for candidate-specific activity and for activity that benefits the entire ticket. In the total universe of political money, the parties would become more significant players.

In closing, Mr. Chairman, let me say that the Democratic National Committee stands ready to work with your committee and its staff in refining the provisions of the McCain-Feingold bill to develop a bipartisan measure that will achieve real reform while preserving and enhancing the role of the political parties. I know that President Clinton remains more strongly committed than ever to seeing this task completed during the current session of Congress. If this Congress can accomplish that task, you will render an enormous service to the American people and you will have done much to brighten the future of our democracy.

Senator Feinstein, as to your specific inquiry about bundling, the essential question in bundling is the question of accountability. If in the process of bundling accountability can be maintained—that is, who actually gives the money to the bundling agency, and to whom the money goes, and for what purposes—I think bundling can be acceptable.

One of the difficulties with political action committees and the money that they collect is that it is a form, in effect, of anonymous or near anonymous bundling. I think that we have to sort that out and make distinctions between groups that do, in fact, report and report effectively and those that don't. I think accountability is the key question there.

Thank you, Mr. Chairman. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Fowler follows:]

PREPARED STATEMENT OF DONALD L. FOWLER, NATIONAL CHAIRMAN,
DEMOCRATIC NATIONAL COMMITTEE, WASHINGTON, DC

It is a pleasure to appear before you today to discuss the issue of campaign finance reform.

The President has made clear his strong commitment to reforming our campaign finance system. We are proud of that commitment and of the hard work the President has already put into this challenging endeavor. Together with lobbying and ethics reforms, on which the Administration and the Congress have already made so much progress, reforming the campaign finance system is something we have to do as part of the massive task of restoring the confidence of ordinary citizens in our institutions of government. Democracy does not and cannot work when vast numbers of people believe the government no longer belongs to them. For these reasons, we support S. 1219, the McCain-Feingold bill, as a bipartisan framework for campaign finance reform. Through enactment of McCain-Feingold, we can achieve meaningful campaign finance reform while preserving and enhancing the role of the political parties.

Let me offer some thoughts about the need to strengthen the political parties. Although I am here as National Chairman of the Democratic National Committee, I view these issues from the perspective of my own experiences—as a person who has long been interested in and involved in the political process and, most of all, as someone who has spent 30 years working at every level of party organization. It has been my privilege to serve, over those years, as chairman of my own state party in South Carolina and, for almost 25 years, as a member of the DNC.

During those years, I have witnessed—as all of us have—a significant weakening of the parties as institutions and a decline in their role in American political life. It used to be that the parties were one of the key means by which citizens felt connected to the people who represented them. Through precinct and neighborhood organizations, ordinary citizens were directly involved in the workings of the party; local party officials were in touch with the citizens and in turn reflected their views and needs to the party hierarchy and elected officials. Because parties provided many of the resources their candidates needed to get elected and re-elected, candidates were directly dependent on parties, and once in office, felt a responsibility to the party leadership in the Congress and legislative bodies. The result was a linkage between the people, the party and elected officials that has been sorely lacking in recent years.

There are many reasons for the decline of political parties; volumes have been written on the subject. One key factor, to be sure, is the dominance of television. Campaigning used to be a retail business in which parties played a central role in linking people with their government, by performing many basic public and public functions, including voter registration, persuasion and get out the vote. Television shifted campaigning to a business of wholesale, mass communications in which each candidate is required to formulate her own message, to create her own organization and to raise her own substantial funds to get the message on television. And so we have seen candidates increasingly forced to act as individual entrepreneurs, less and less connected to parties.

It is not surprising (and no accident) that the shrinking role of parties has been accompanied by growing alienation of the American people from, and cynicism about, politics and politicians. The linkage, the involvement, once provided by parties is missing. And into the vacuum created by that shrinkage have come any number of institutions, primarily special interest groups of all sorts who now play the key role in brokering the relationship between the citizens and their elected officials. It is these special interest groups who now represent, or purport to represent, various segments of the population to members of Congress and legislators at all levels of government.

If this entire trend has been an unhealthy one for our democracy—and I believe it has been—then surely part of the solution is to find ways to strengthen political parties as institutions and to enhance and expand their role in American political life.

Part of that burden falls on the party organizations themselves. And in that regard, I am proud to say that our General Chairman, Senator Chris Dodd, and I have made it a priority to begin the business of rebuilding the Democratic Party at the grassroots. We are intensively involved, right now, in building and developing a stronger staff, improving our technology and strengthening the infrastructure of our state party organizations. We have hesitated a new national precinct organization program that I believe will be the first step in getting ordinary citizens in their neighborhoods involved in the actual work of the party once again.

We can already point to one significant accomplishment in this respect, which is the development of a model we call the "Coordinated Campaign." Beginning in the 1990 election cycle, and increasingly since that time, the National Democratic Party has made it a priority to have our state parties create and carry out plans to perform the core functions of voter registration, identification, voter contact and get out the vote jointly on behalf of Democratic candidates up and down the ticket.

These Coordinated Campaigns make use of the current legal ability of state parties to conduct grassroots volunteer activities on behalf of federal candidates without counting against contribution and expenditure limits. Coordinated campaigns have been extremely successful—not only in getting our candidates elected, but in unifying candidates around common messages and themes and making the parties, as institutions, once again, a principal vehicle of support for candidates—and thus critically important players in the system.

With that background, let me turn to some fundamental principles that I believe should guide the Congress in formulating campaign finance reform legislation. As the President has articulated, real campaign finance reform must focus on four objectives:

- First, limit campaign spending;
- Second, restrict the role of special interests, including PAC's;
- Third, open up the airwaves to all viable candidates; and
- Fourth, ban the use of soft money, directly or indirectly, in federal campaigns.

As you know, Mr. Chairman, the President has expressed his support for S. 1219, the McCain-Feingold bill, as the bipartisan framework for accomplishing meaningful campaign finance reform. I am pleased to note that this legislation is also co-sponsored by our General Chair, Senator Dodd.

The McCain-Feingold bill would effectively serve the major goals of campaign finance reform as outlined by the President. First, it would limit campaign spending. The bill would encourage candidates to observe voluntary spending limits in exchange for reduced rate broadcast time and low-cost mailing rates, and by raising contribution limits for a complying candidate facing a non-complying opponent.

Second, the bill would restrict the role of special interests by banning PAC contributions to candidates.

Third, the bill would open up the airwaves by offering reduced rates for broadcast time to candidates complying with the spending limits.

Finally, the bill would ban the use of soft money to help federal candidates. Specifically, the bill would prohibit national parties from raising or spending soft money for their own operations. It would also prohibit state parties from spending non-federal, or soft, money for generic campaign activity and for any portion of candidate-specific activity that affects federal candidates. The bill would, however, permit state parties to use non-federal funds, as permitted by state law, for a portion of their administrative expenses, for party meetings and conventions and for activities affecting only state and local candidates.

Under McCain-Feingold, the state parties would continue to be able to conduct an unlimited amount, not only of generic voter registration and get out the vote activity, but also of candidate-specific activity that affects federal candidates. The

bill would, however, permit state parties to use non-federal funds, as permitted by state law, for a portion of their administrative expenses, for party meetings and conventions and for activities affecting only state and local candidates.

Under McCain-Feingold, the state parties would continue to be able to conduct an unlimited amount, not only of generic voter registration and get out the vote activity, but also of candidate-specific activity using volunteers—distribution of literature, signs and other materials, mailings handled by volunteers and, for the Presidential campaign, get out the vote phoning, door to door canvassing and similar activities.

These provisions would enhance the role of the parties in several ways. First, with PAC contributions eliminated, the role of the parties' activity on behalf of candidates would become relatively more important. The resources the parties could contribute would consist not only of cash expenditures subject to section 441(d) limits, but also volunteer grassroots activities which would remain unlimited. These would represent a greater a proportion than they now do of the candidate's total resources.

Second, with spending caps imposed on candidates, candidates would require less total contributions than they do now, and more federally-permissible funds would be freed to be contributed to the parties.

Third, the spending caps would mean that parties would be spending more than they now do relative to candidates, both for candidate specific activity and for activity that benefits the entire ticket. In the total universe of political money, the parties would become more significant players.

In closing, Mr. Chairman, let me say that the Democratic National Committee stands ready to work with your Committee and its staff on the McCain-Feingold bill to develop a bipartisan measure that will achieve real reform while preserving and enhancing the role of the political parties. I know the President remains more strongly committed than ever to seeing this task completed, during the current session of Congress. And if this Congress can accomplish that task, you will have rendered an enormous service to the American people and you will have done much to brighten the future of our democracy.

Thank you very much and I would be pleased to answer any questions you may have.

The CHAIRMAN. Senator Dodd, would you like to give an opening statement?

Senator DODD. Thank you, Mr. Chairman. I appreciate that.

First of all, let me thank you again, Mr. Chairman, for holding these hearings. I think it's a great tribute to you and the leadership of this committee that you're allowing for a good healthy debate and discussion of these ideas. I certainly appreciate that and welcome it, as the General Chairman of the Democratic Party.

That's a mouthful here, to be the General Chairman. I facetiously said, Mr. Chairman, that having only risen to the rank of corporal in the United States military, I appreciate the title of "General" Chairman of the party in many ways, and I am delighted to welcome my great friend and counterpart and colleague in the Democratic National Committee, Don Fowler, who is doing a wonderful job as the National Chairman of our party.

I am also delighted to welcome Haley Barbour, the chairman of the Republican National Committee, for whom I have developed a deep affection personally. We disagree on everything, but I found in this world of Washington, the people with whom I agree all the time, I can't tolerate being with, and

people whom I disagree with all the time, I enjoy immensely. Haley and I disagree on a lot of issues, but have developed a true personal affection for one another.

Let me begin on a positive note, Mr. Chairman, and that is to commend both of our witnesses for something that I think we need to discuss far more in this country than we have. We call this the "American" century, the 20th century, and there are a lot of reasons why it's been a remarkable century for this Nation. Among those are American contributions not only to the people of this country, but also to those around the world on numerous occasions. Every one of us in this room is familiar with those great American acts, and some in this room participated in them very directly.

I don't think enough credit has been given in that debate and discussion for what a strong two-party system has meant. We watch around the world, mostly in parliamentary systems, where a handful of people, who have formed a small faction, wield extraordinary power, forming coalitions or forming governments. We saw it in the 19th century in this country, before the real emergence of a strong two-party system, where groups gathered together under a variety of banners and were able to exercise extraordinary power, power far beyond the numbers of people that they represented in their ranks in forming coalitions.

We have been blessed in many ways because we've had a strong, two-party system. That does not mean that we exclude others, but a strong two-party system has really done wondrous things for our Nation, giving people an opportunity to rally behind common banners and through democratic processes, not through violent means. We have gone through transition after transition of one government after another in a peaceful way, because we provided a political opportunity through the two major parties for people to express their views and thoughts.

I am deeply appreciative of the testimony of both of our witnesses, who recognize that. I wish more people did. Frankly, it's important that not only do our party chairmen talk about this, but those of us on this side of the table talk about it. Too often we denigrate it. We join the clamor to undermine, in effect, the value of a strong two-party system.

I have come to appreciate it immensely, and I'm a classic example, Mr. Chairman. I arrived here in this town in 1974. A lot of comparisons have been drawn between the class of '94 that arrived, the new Republicans, and the class of '74. In 1974, many of us won our seats to Congress because we, frankly, did it all on our own. John Bailey was my State Chairman, one of the great National Chairmen of our party, and yet, in 1974, after a lot that we had been through, the parties just lacked the kind of influence and I went off on my own. I raised my own money, put together my own operation, did so in spite of the political parties. We have seen a repetition of that over and over again.

Now, that's always going to be, and we're not going to turn the clock back, but there is a great value in a sense of finding those tenets that allow us to come together.

Now, having said that, I happen to believe that the McCain-Feingold bill, in fact, contributes to strengthening the parties. Not in every sense, because I have some real concerns about the soft money to political parties, which I think is a mistake in the McCain-Feingold bill. But the fact that I find shortcomings in the McCain-Feingold bill does not take away from the essence of it.

That goes to the very heart of the question. That is, the notion we have talked about, Mr. Chairman, that you have raised on numerous occasions in your concerns for campaign finance reform, and my colleague from California who has her own bill in on this, that has variations but maintains many of the same themes. That is this incredible amount of time and effort we all spend, unless we're independently wealthy, to go out and raise the dollars for re-election.

Now, I'm not up until 1998. Normally, you would wait until the last 2 years of your cycle to raise the money. That is no longer true. That was true when you had to raise maybe, in a State like mine, a million dollars or 2 million dollars. I am told that, in 1998, a competitive race in Connecticut—and again, I have the New York and Boston media markets, so it's a bit higher than other States than my size would normally indicate—but it will probably be \$5 to 6 million in a competitive race. That means, because I do not have personal wealth, as everyone knows, I would have to raise on average about \$16–20,000 per week for the entire 6 years that I'm here.

Now, if anyone can justify the rationale for that, I would like to hear it. When I'm having to spend time to raise \$16–20,000 a week, week in and week out, for 6 straight years—

The CHAIRMAN. Senator, we have a vote coming up and I'm anxious to have time for the panel—

Senator DODD. I'll wrap this up.

Senator FORD. Go ahead. I like what you're saying.

[Laughter.]

Senator DODD. But that's the heart of this. This is just insanity, it's absolute insanity. And to suggest somehow that we're not spending enough money in politics just belies the facts. I spend time on this. I've got an office, not my Senate office, off Capitol Hill. I have it staffed. I go spend a few hours every week and I go in and I make those phone calls. Maybe others won't admit it, but I'll tell you what I do, because I know if I don't start to do it, then I can't do it in 2 years.

The CHAIRMAN. Senator—

Senator DODD. So I'm hopeful that our colleagues, in a bipartisan way, despite the legitimate points that have been raised about the McCain-Feingold bill, will find a way to come together on this and move this process forward.

We Democrats made the mistake, in my view, in the first 2 years of the Clinton administration, by not moving this issue. We made a huge mistake, in my view. Having made that mistake, let's not duplicate it. We have a chance here to move forward.

I will ask that the remainder of my remarks be put in the record, and I thank the Chairman for giving me the opportunity.

[The prepared statement of Senator Dodd follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR
FROM THE STATE OF CONNECTICUT

Mr. Chairman, let me first say that it's a great pleasure to see both Chairman Fowler and Chairman Barbour here today.

While I realize there are few topics that you two see eye-to-eye upon, I believe that campaign finance reform provides a rare opportunity for bipartisan agreement. If there is one issue we should all be able to agree on it's the need for genuine, comprehensive reform.

Poll after poll indicates that the American people's cynicism toward government is at record heights. Certainly, it's not hard to understand why.

By the end of January, candidates for President had spent \$138 million—all before a single ballot had been tallied. In 1994 alone \$724 million was spent on House and Senate campaigns. What's worse, the constraints of the current campaign system often restrict public office to those candidates with large wallets, instead of those with new ideas. Whatever one may think of Steve Forbes or Ross Perot, few people would know about them if they weren't multi-millionaires.

The unique honor that I've had to serve in the U.S. Congress is for the overwhelming majority of Americans simply not possible. And it's not because they lack desire, ability or sound ideas. They are excluded because they lack either the necessary wealth or the ability to raise it. That's why as General Chairman of the Democratic Party, I am particularly pleased to see Chairman Fowler come out in support of the McCain-Feingold bill for campaign finance reform.

In my view, the political process is drowning in money and special interest influence and the McCain-Feingold bill would take a huge step forward in reversing this trend. By limiting overall campaign spending this legislation will allow candidates to focus less time on raising money and more time on tackling the issues that truly affect the American people.

The McCain-Feingold bill would also help to solve the problem of candidates who bankroll campaigns with their own personal fortunes. This legislation would level the campaign playing field by exempting candidates from the bill's benefits if they spend more than \$250,000 of their own money.

The McCain-Feingold bill is not a perfect bill. In particular, the financing arrangements pose challenges for candidates from small States. Additionally, we need to be sure that working people are not restricted from participating in the political process and that grass-roots and volunteer activities are not constrained. However, I share Chairman Fowler's belief that limiting PAC contributions and overall campaign spending will strengthen our Nation's political parties.

In the nearly year and a half since I became General Chairman of the Democratic Party I have become acutely aware of the critically important role that America's political parties play. In an increasingly pluralistic political system, parties provide a cohesive base for our Nation's voters.

I support the efforts of both Chairman Fowler and Chairman Barbour to encourage greater participation in political parties and I believe the McCain-Feingold bill furthers that process. Overall, this bill is an excellent place to start our efforts in ending the influence of money on the political system.

I challenge my colleagues Senator D'Amato, who is Chairman of the National Republican Senatorial Committee, and Chairman Barbour to join me in endorsing this bill. Let's show the American people we're serious about reform and that we can use this opportunity to elevate campaign finance reform, in a bipartisan manner, above the normal political fray.

The CHAIRMAN. Gentlemen, expressing my own concerns—and I would like to limit myself to about 4 minutes. We're going to have a vote and I want to share the time with my colleagues.

Senator FORD. Limit all of us to 5 minutes.

The CHAIRMAN. Fine. We'll do five.

Constitutionality. As I have participated in these hearings, I have asked each of the witnesses to talk about that very complicated aspect of these proposals. My greatest concern is that somehow a bill can be cobbled together and put up and the public thinks it has a lot of good ideas in it and why doesn't the Congress pass it, and the Congress knows full well that provision after provision will be struck down by the Federal Courts and ultimately the Supreme Court. That is an unfair, false representation by the Congress to the American public.

So we have a fundamental duty to address constitutionality.

What I would like to ask of both witnesses is if they would supplement their testimony today by asking their respective counsel to give us their best advice on the various constitutional issues which impact on so many of the provisions, and primarily in the McCain-Feingold bill. I find a number of intrinsic and important constitutional issues. So if you would provide that to the committee, you will do us a great service.

Mr. BARBOUR. We'll do that.

The CHAIRMAN. Also, Senator Dodd, you made reference to your respect for Haley Barbour. I want to note that last night I joined the distinguished minority leader in a brief eulogy to Ron Brown. Of course, he was a key figure in this American political system and his loss is a loss to the Nation. Undoubtedly, he might well have been a witness in the course of these hearings because of his depth of knowledge on this subject. I share respect for him in the same way you do for Mr. Barbour.

Senator DODD. I probably ruined Haley's career with those comments.

The CHAIRMAN. Let me tell you, that career is going to go down in history. Just wait until November of '96.

[Laughter.]

That's judgment day for Haley Barbour.

Mr. Fowler, in the discourse we've had here with a number of witnesses, this question of compulsory union contributions comes up time and time again. It is almost a feeling that it's alien to the American system.

Give us your view about, first, the practice itself, and your opinion as to—obviously, you have an opinion that it should go on—and the need for greater disclosure associated with the financing by unions of various campaigns.

Mr. FOWLER. Senator, first of all, contributions that are made to political action committees that are organized and administered by unions are entirely voluntary, just as any other political action committee. The independent expenditures made

by unions, not coordinated with parties, are no different than the independent expenditures made by the National Rifle Association or the so-called Christian Coalition. It's the same.

With respect specifically to the use of the money for independent expenditures from union dues, as you know, in right-to-work states, workers do not have to join unions and, therefore, they are not compelled, if you will, to make those contributions.

In nonright-to-work states, unions are required to notify their members and members can request rebates and, therefore, escape the effect of having disagreeing members making contributions to a political effort with which they do not agree.

I would point out—I'm sure that Mr. Sweeney and others can take care of themselves on this quite adequately—that they did have a special convention to authorize the expenditures which they purport to make, intend to make, in 1996.

I would point out lastly, Mr. Chairman, that corporations make contributions to political parties and to political efforts. These corporations at their heart are composed of members, if you will, called shareholders. These corporations don't go around and ask their shareholders if it's okay to make a contribution to a party or a political effort. I think that's a comparable analysis, if you will, between unions and corporations, and making contributions and not making contributions.

I would point out that there are legal provisions for those who do not want to make those contributions. Secondly, and perhaps most importantly, these are independent contributions, not to political parties, and that should be addressed in a different—

The CHAIRMAN. My time is about to expire.

One of the provisions, just in an omnibus sense that I'm looking at, is greater disclosure across the board. I know my colleague here has advocated that from time to time.

How would you feel about greater disclosure of exactly the amounts raised and how they're spent?

Mr. FOWLER. I think greater disclosure from unions, from any other independent groups, from political action committees, as long as they're authorized, and from political parties, is a beneficial feature of the political system. I would encourage that, and I would encourage it to be more timely and more effective in identifying specifically who makes the contributions.

The CHAIRMAN. Mr. Barbour, would you like to respond to both questions, one, the compulsory process, and—

Mr. BARBOUR. First of all, it may have been hard to hear Chairman Fowler, but in fact, these campaigns are being paid for exclusively with compulsory union dues. I mean, just in case anybody missed that in his response, it is absolutely the case. There is no practical way for union members to opt out. The United States Supreme Court recognized that in the *Beck* decision, and this administration has chosen not to develop a

mechanism to enforce the *Beck* decision to allow agency members, at least, to get back in that case, where the Communications Workers were spending 79 percent of the money on political activity.

The 40 percent of union members who voted Republican are having their money compelled to pay, because they have to join the union if it's not a right-to-work state, and they're having their money forcibly taken from them and spent to defeat the people they voted for.

Last week in Maine, in one TV market, against Jim Longley, the AFL-CIO ran 148 television spots. That's 148 television spots last week. How can it be fair to saddle him with a spending limit when somebody who doesn't even have to report, and has a bottomless well of money because they can compel people to pay, even a \$25 million special assessment, to run advertising against him?

The CHAIRMAN. Thank you.
Senator Ford.

Senator FORD. I might say to Chairman Barbour, they may have felt after 12 months they made one hell of a mistake and were willing to pay for it.

[Laughter.]

Mr. Barbour, in your statement before the House Oversight Committee, you stated that the RNC is opposed to any prohibition against the use of soft money or nonfederal money for legitimate nonfederal purposes. As you are aware, the McCain-Feingold bill includes such a prohibition.

What specifically do you mean by "legitimate nonfederal purposes"?

Mr. BARBOUR. Senator, as I said in my testimony, the Federal Election Commission has developed an allocation formula. When the Republican National Committee makes a contribution to a governor's campaign, a legislator's campaign, to a state party to use in state campaigns, that is 100 percent payable in nonfederal money. But some activities are indistinguishable. Overhead. They have many effects. The Federal Election Commission said you have to pay 60 percent of that in federal, 40 percent in nonfederal, except in this election year because its presidential, 65/35. We think that is a proper allocation, a legitimate allocation of the spending.

What we think would be wrong is to say that if Kentucky—Kentucky has a very unusual spending limit and contribution limit. We think Kentucky has got that right and everybody should have to abide by it. But California's law is very different. The government should not tell everybody they have to do what Kentucky does or what California does for state and local elections. It's really that simple. And because we are the party of governors and legislators, we abide by state law and we don't think the Federal Government should usurp the

regulation of state and local elections, which this would, in effect, do.

Senator FORD. I think it would give uniformity in the amounts and so forth, which we have tried to do.

Let me ask this question of both of you. When we talk about independent expenditures and try to get around some of those, S. 3, which we passed last year in the last Congress, permitted the national committees to establish what we refer to, I believe, as a "response fund", to provide funds to respond to independent expenditure attacks against their candidates, for their own defense. The money could be used directly or you could give it to the individual candidate to use, or the party could use it, and a separate contribution limit was set up for that of \$7,500 per year per person, as I recall. The amount spent in response was limited to the amount spent against the candidate.

Would each of you comment on that proposal? Is it something your committee could undertake, or is it reasonable? We always hear these constitutional questions, you know, we've got to be very careful. I understand that. The First Amendment rights, I understand that. But somehow or other, we have got to stop this \$15-20,000 a week solicitation of funds to run for the next campaign for 6 years.

We know there are people who go to California and get \$100,000, go to Texas and get \$100,000, go to New York and get \$100,000, go to Florida and get \$100,000. It's just all over the country.

Senator DODD. They have not gone to Connecticut quite frequently.

Senator FORD. I understand.

I'm just saying, I think that's what the national parties ought to be doing, rather than the individual going out and sucking up the money that you ought to have. So I think, in the long run, if we were to try to go through this mine field and try to find a way to make it so you won't have to go out and raise \$6-, \$8- or \$10 million, and somehow or other there has to be—I understand the First Amendment rights. If you were born with hundreds of millions of dollars, you could just spend all you want to spend. Some good people, probably better than the individual who has the money, would never take on that individual because of the war chest. Somehow or another, we've got to get away from all this.

I'm going to drop off here now. My 5 minutes are up, and we have to go vote sometime today and exercise our prerogative here.

Mr. FOWLER. Senator, may I respond to that briefly?

Senator FORD. Sure.

Mr. FOWLER. I think the effect of S. 3 is good, but it still places the burden on the individual candidate to raise that money, or on the party. That has the effect of increasing the amount of money, the total amount of money that you have to raise, and I

think does nothing to solve the problem of how much money is being spent in politics generally.

It is my underlying assumption that too much is being spent to properly inform the public, and while it does give a mechanism of defense, a theoretical mechanism, it still puts the burden on the candidate or the party to raise the money. It is that burden that I think creates a difficulty in our system for having an equitable opportunity for people at various economic strata to run for public office. So while I think it's a good provision, I think it's still a problem.

Mr. BARBOUR. Could I just answer very briefly? Senator, it doesn't affect what is happening here. The AFL-CIO advertising is not an independent expenditure. It is issue-advocacy advertising and it is not an independent expenditure under the law. So in the Cincinnati market, you know what that costs. The AFL-CIO sales bought 109 ads last week. There is nothing in S. 3 that would allow a Congressman or the party to respond to that because it is not an independent expenditure.

Senator FORD. But that's one of the things, Haley, that we could try to take care of. We start talking about all these things that you are prevented from doing, and none of us are talking about what can we do to solve it. That's what bothers me.

Mr. BARBOUR. Unlimiting what the parties can do, which I inferred was something you were saying, is an excellent way to approach the problem. Let the parties have unlimited ability. But we are faced with the fact that the United States Supreme Court says the labor unions and the Christian Coalition have a First Amendment right to speak on issues, and when they're spending tens of millions of dollars to attack people by name, it is wildly unfair to say we're not going to let that guy fight back.

Senator DODD. Haley, in Nebraska and Delaware, the parties are spending soft money attacking Democrats in the last week or so.

Mr. BARBOUR. And you all spent \$14 million, Senator—and I think you all have every right to do it. You spent \$14 million in—

The CHAIRMAN. Thank you, Mr. Barbour.

Senator McConnell.

Senator MCCONNELL. Let me make Senator Dodd and Senator Ford feel better. Eighty percent of the money raised in Senate races is raised in the last 2 years of a 6-year term. There is no statistical evidence that Senators are spending every day raising money. That is a phoney baloney argument that's been made for years. Eighty percent of the money raised by Senators is raised in the last 2 years. It is typically raised by those who think they may have a tough race. Some people think that's not necessarily bad. After all, we don't own these seats.

Chairman Barbour, I gather that the crux of your testimony with regard to S. 1219 is that essentially it would crank down the ability of parties to speak and transfer that speech to others, like newspapers and unions.

It is pretty clear from what you have said, and the testimony and the various evidence you have put forth, that the current expenditure of money by the AFL-CIO, under the current system, would become even more prominent under S. 1219, thereby transferring more power, responsibility and speech away from the parties and away from the campaigns to others. Is that correct?

Mr. BARBOUR. That is correct, Senator.

Senator MCCONNELL. I have been following with some interest the Colorado case that was before the Supreme Court Monday. Should the Republican position in that case be upheld, I gather that would take the shackles off of parties, would it not?

Mr. BARBOUR. It depends on exactly how the decision is written, but that is what I hope will happen.

Senator MCCONNELL. If that were to happen and the parties, assuming they could raise the money—they don't have any compulsory contributors, as far as I know—but assuming they could raise the money, they might at least have a chance to compete with groups like the AFL-CIO; is that correct?

Mr. BARBOUR. Well, as you say, we wouldn't have any compulsory union dues to do it with. The unions are the only people—You know, the Christian Coalition, the NRA, that's not similar. They don't get compulsory dues but all voluntary contributions.

But to the extent that we could raise the money, yes, sir, then we would have the ability to do that. And as Senator Ford said, if the citizens are mad about it or care enough about it, they will give us the money. The law requires us, rightly, to report every dime, every dime we receive and every dime we spend. That disclosure is very, very important.

Senator MCCONNELL. One of the things that hasn't been touched on very much is the size of the Federal Election Commission, should S. 1219 become law. I have asked a couple of FEC people over here over the years to estimate the size of their agency, and we haven't gotten a very clear answer.

But if you had a spending limit in every congressional race in America, and every Senatorial race, we know, with just one race, the presidential race having spending limits now, that audits typically are not completed for 5 or 6 years after the race is over.

Has anybody over at the RNC done any estimate of just what size the FEC would have to be to audit all of the speech of all of these candidates out across America?

Mr. BARBOUR. Plus the outlawing of using nonfederal money is another element there.

Senator, I can't say with precision, but I expect it would be larger than the Border Patrol but smaller than the IRS.

Senator MCCONNELL. Almost as big as the Veterans Administration maybe.

The point I'm making here is that for the government to step in and regulate all this speech, of all of these people, it is going

to require the building of a massive bureaucracy here on the banks of the Potomac, to try to calibrate all of these expressions of political views all across America. I would hope that in the end the Congress would conclude that this is not exactly what we were sent here to do, to build another massive bureaucracy to regulate speech in this country, in the name of trying to push voluntary donors to candidates of their choice out of the system.

Mr. Chairman, I know we've got a vote, so I will just stop.

Mr. FOWLER. Mr. Chairman, may I make a comment before we conclude?

The CHAIRMAN. Yes, indeed. Go right ahead.

Mr. FOWLER. I want to make it clear that the AFL-CIO expenditures are independent expenditures. The insistence on Haley's part that they're compulsory contributions—

The CHAIRMAN. Draw your mike up just a bit. Could you review your response once again?

Mr. FOWLER. I want to make it clear that the expenditures by the AFL-CIO are independent expenditures, in the same vein that the National Rifle Association, the so-called Christian Coalition and others are independent. The insistence that Haley has that they're compulsory union dues is not accurate because there is a way for a member who does not agree with those expenditures to recoup that person's contribution.

I point out that we do not hear much criticism from Mr. Barbour and his friends when independent expenditures come from the other side doing precisely the same kind of thing that he accuses the AFL-CIO of doing.

What we have here is whose ox is being gored. There are constitutional questions involved, but I don't know of anyone who believes—I know few people who do not believe that we spend too much money on campaigning in the United States, that we need an equitable system that will more nearly level the playing field between incumbents and challengers. I think we need greater accountability.

And, Senator Feinstein, I think that's one thing we need to look at in the bundling. We need that in order to restore faith on the part of the American people in this system.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Feinstein.

Senator FEINSTEIN. Just very quickly.

My own personal philosophy is that I don't want to be a creature of any political party. I want to be an independent individual who has support of a political party to whose views I happen to subscribe.

Senator McConnell said that people don't spend more than 2 years in really fundraising. That is simply not true if you have to raise a lot of money. You simply can't do it. In 6 years, I have raised \$42 million. It has not been easy. I had a 2-year term. I was

up against a very wealthy individual who could put \$30 million into a campaign.

I think the most important thing that any bill has to achieve is some voluntary spending limits. California has just voted for an open primary. That indicates to me that Californians want more independence and less political control as well, because that's essentially what happens in an open primary.

It seems to me, Mr. Barbour, that if you believe that unions are arbitrarily raising dues, you should take it to court, because my understanding is that that's illegal to do.

I also think that the way things are going in the future, the ability of Democratic women united, Republican women united, African-Americans united, Asian-Americans, business people, to get together in a nonconnected way, raise funds, whether you are the Christian Coalition or whether you're the NRA or anybody else, to say we want to support individuals who subscribe to our point of view, I think that's good. I happen to think that's strong in the American process.

So I see a lot of conflicting motives when we forge a bill. All I want a bill to do is be fair, see that the playing field is level for all contenders as much as possible, and that gives people an equal opportunity at the starting line. I don't want to see a bill that necessarily develops or creates a party structure in this country that is so strong that somebody who wants to be independent of it can't survive in the process.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Dodd.

Senator DODD. Just on the *Beck* decision—and I think this is an important point, and we've heard this mantra over and over again. I know of no actions that have been filed, Mr. Chairman, under the *Beck* decision. Maybe someone can correct me, or counsel can correct me. But the law is pretty clear on this. To hear the repetition over and over again of this coerced contribution, when in fact the Supreme Court has held categorically that individual members have the right to rebates if they disapprove of such a collection, unless someone can tell me otherwise, I know of no action that's been filed. I don't believe the RNC has filed any class action under this.

If 40 percent of the members of organized labor voted Republican and disagree, I presume you could bring a class action suit. Nothing has been filed that I know of, Mr. Chairman.

The CHAIRMAN. Well, you know, the process of getting a rebate is burdensome. It isn't a process that an individual in a union wants to undertake because it's difficult to live and coexist and work with his peer group.

Senator DODD. Well, why not make the same—

The CHAIRMAN. It seems to me it's fundamentally wrong, the coercion in the beginning.

Senator DODD. Coercion is one thing, but—

The CHAIRMAN. He knows a back door to get out on a legal action.

Senator DODD. Well, in the shareholder issue, which Chairman Fowler pointed out, they are the owners of the companies. The companies are owned by shareholders, not by the managers. They decide they're going to take shareholder money. The shareholders have no rights at all, none whatsoever, to decide whether or not their dollars are going to be used in campaigns, or these independent committees.

So I hear no suggestion that shareholders ought to be given the right at least to demand a rebate when their money is spent. You might talk about the complexities of doing that, but nonetheless, there it is, because in most cases large corporations are supporting Republicans and that's perfectly okay. That's okay. But God help us if some member who is out there working for a living, and he watches what happens on the minimum wage, watches what happens in Medicare, on education, and he says I want to do something about it, all of a sudden we hear screaming about the fact that they're going to compete in these races and be heard.

The CHAIRMAN. Senator, I think the wisdom of the hearing is to hear from our witnesses a little bit. Would you care to wrap up?

Senator FORD. Mr. Chairman, I would like for the record to be kept open so that we might go back and look at some of the statements that have been made here today.

The CHAIRMAN. Without objection.

Mr. Barbour, you take about a minute-and-a-half, and Mr. Fowler, and then the Senators have to depart.

For purposes of the hearing, there are two votes back to back, and it would be my intention to speedily vote on the second one and return and reconvene the hearing.

Thank you very much.

Mr. BARBOUR. If I may say, sir, in answer to Senator Dodd's question, the Department of Labor has not put in place a process to enforce the *Beck* decision. It is correct that members of the union or agency members could file lawsuits, but the Department of Labor has put no process in effect. There's been a complaint made publicly against the Department of Labor, that they have not put a process in place for members to get their money back.

But one point, Senator, that I think has to be emphasized. There is nobody here denying that these millions are being paid for out of union dues. This is not an independent expenditure under law, because you can't pay for independent expenditures out of union dues. They would have to pay for it out of their PAC's. They're paying for it all with dues money.

It is not that I believe they have raised the dues. They publicly announced they have raised the dues. They publicly announced

that they had a vote and have a \$25 million special assessment of dues. So it is not me. It is them bragging about it.

The CHAIRMAN. We have to depart.

Mr. Fowler, do you want 30 seconds? Would that be helpful?

Mr. FOWLER. I want to thank you, sir, and the members of the committee, for the opportunity of being here.

Let me simply say that it is unquestionable, by any measure of public opinion and sentiment, that the American public is alienated and they feel disenfranchised, in large part because of the excess money that's spent on political campaigns and political action committees in this country. We need to address that in an effective way.

Thank you, sir.

The CHAIRMAN. This has been an excellent panel. We will stand in recess until the call of the chair.

[Recess.]

The CHAIRMAN. I am sorry for the delay. Senator Ford had hoped to return, but his responsibilities on the Floor as the Whip have required him to stay. Likewise for Senator Dodd. I tried to get him to come back over, but he was not able to come. So please forgive their absence.

We will now proceed with Mr. James J. Brady, President of the Association of State Democratic Chairs, and Mr. Robert T. Bennett, State Chairman, Republican State Central and Executive Committee of Ohio.

Since we started with Mr. Barbour on the first panel, I think we will start with you, Mr. Brady, on the second.

TESTIMONY OF JAMES J. BRADY, PRESIDENT, ASSOCIATION OF STATE DEMOCRATIC CHAIRS, WASHINGTON, DC

Mr. BRADY. Thank you, Chairman Warner, Senator McConnell. I want to thank you for this opportunity to appear before this committee today to address one of the most important and least understood aspects of campaign finance reform.

The CHAIRMAN. We will admit your complete statements to the record, and you may selectively testify as you wish.

Mr. BRADY. Thank you.

The point I really want to make before the committee this morning is very simply—and I think Chairman Bennett would join in this—is that in any of this process we do not want to see political parties hurt in a very detrimental way. We don't want to see legislation that takes away the ability of political parties to do something and then, in essence, gives it to a third party, an independent third party operation. We don't think that's good for any segment of the political process in this country.

Senator MCCONNELL. If I could interject, does that mean you don't support S. 1219?

Mr. BRADY. No, I support it, but I think that as a framework we need to adjust it, as Chairman Fowler indicated in his testimony previously, and as others have indicated as well. I think it's a framework and I think we should put the emphasis on the disclosure aspect of it. That is something we do now, but we need to emphasize that aspect of it more so than maybe some other aspects.

I think that we, as state parties, tend to be the whipping boys in this process some times. I think it's very easy for people to make something out of political parties that we're not. I mean, we go to great lengths now to comply with what are very burdensome regulations for most state parties. We just do not have the staff or the operation to really be as attentive as we possibly should. We do, but it takes an inordinate amount of our time and it takes a lot of effort.

The CHAIRMAN. Does that conclude pretty well your opening statement?

Mr. BRADY. I think so. You have my prepared remarks.

[The prepared statement of Mr. Brady follows:]

PREPARED STATEMENT OF JAMES J. BRADY, PRESIDENT, ASSOCIATION OF
STATE DEMOCRATIC CHAIRS, WASHINGTON, DC

Chairman Warner, Senator Ford and Members of the committee, I want to thank you for this opportunity to appear before the committee today to address one of the most important, but least understood aspects of campaign finance reform, that is the role of political parties in our electoral process. As the President of the Association of State Democratic Chairs, I am regularly reminded of how ignorant even our nation's opinion leaders are regarding political parties. If all you knew about our political parties is what you were able to glean from the popular press, you would conclude that political parties were mere shells through which enormous sums of money were laundered outside the public's eye to unscrupulous politicians. In fact nothing could be further from the truth.

Our two major political parties are amazingly open, not only to those who seek to participate, but to those who seek to scrutinize our activities. For the tens of millions who participate in our primaries, for the millions who participate in our caucuses and for the thousands who run our day to day affairs, being a Democrat or a Republican represents a continuing belief and commitment to our democracy. To those who fear that our parties are drawn to the shadows, let me assure them that we prefer the light. The detailed reporting that is required of our party committees at both the federal and state levels is a burden—and let there be no doubt that it is a burden—but it is one we freely accept. We have no quarrel with those who demand to know what we are up to. If you want to know where we get our money, it is there for all to see. How we spend it, that is no secret either.

Our critics seldom acknowledge that a political party in comparison to a typical PAC receives far greater scrutiny and is subject to far greater regulation. With your indulgence, let me give you a few examples. Unlike a corporate or labor PAC, a political party committee is not allowed to pay its operating costs from unregulated treasury dollars. And unlike the NRA or the National Abortion Rights League, a political party committee is not permitted to make independent expenditures. And unlike the AMA or the Trial Lawyers, a political party committee is restricted in communicating with its members. The current regulatory scheme is indeed onerous and regrettably a drag on party activity. The party is simply not a preferred player under the present law.

But I am not here to complain, rather I have come to voice support for, and to elicit your aid in strengthening our two party system. This system has served our country well. It gives coherence to our politics. It takes disparate voices and

through a truly open and democratic process reduces vast differences to two positions from which the electorate can rationally choose. Yes, at times, real disagreement is papered over within our parties, but to me that is a strength not a weakness. The internal debates that rage in our party caucuses allow real differences to be confronted. If full resolution is not always achieved, sufficient accommodation is made to make governing possible. One need only look to the current budget debate to appreciate how well the two party system — for all its messiness and imperfection—ends up presenting the electorate with real choices, with real alternative visions. Our two party system is a great antidote to single interest politics. Only in a nightmare could I dream of swapping our two party system for the chaos so characteristic of multi-party democracies. I truly believe that strengthening our two party system should be among your highest priorities.

Putting aside the philosophizing for the moment, let me make a few practical suggestions on how to do that. As you may know, current law permits state and local party committees to conduct get-out-the-vote campaigns on behalf of their Presidential nominees. Regrettably, there is no similar exemption for non-Presidential elections. Extending this exemption would be a very positive step. It would free the political party to mobilize the electorate on behalf of all its candidates and in doing so invigorate our democracy. Many politicians, myself included, got their start in politics as volunteers going door to door or stuffing envelopes. We should do whatever we can to guarantee that this entry door to politics remains open. Its value extends beyond any election. We should not allow the media spin doctors to monopolize our politics.

Along with extending this exemption, I would encourage you to revisit the required volunteer component of the exemption. Refashioning the volunteer component to reflect current campaign techniques and technology would be beneficial. Current FEC guidelines are not very helpful in assisting state parties in determining the level of volunteer activity that is necessary to qualify an activity, such as a mailing, for this exemption. Additionally parties now communicate with the electorate in ways unknown at the time of the laws enactment. E-mail, fax trees and the Internet are all tools of the modern campaign. Parties should be free to use these technologies to communicate with their members without falling afoul of the election law.

One old technology that should be liberated for use by political parties is the newspaper. I find it ironic that the corporate conglomerates that control so many of our major daily newspapers may use their pages to endorse or criticize our candidates without any restriction or obligation, but a political party may not use voluntary contributions to pay for an ad in a newspaper to respond, or to endorse its nominees. I therefore would recommend that state and local committees be allowed to take out newspaper advertisements in support of their candidates without violating election law. I would go so far as to recommend that local committees be able to do so, if this is their only federal activity, without having to register and report to the Federal Election Commission.

To many, the above suggestions may seem technical or minor manners, but to those of us who labor daily to keep our parties alive and healthy, their adoption would mean a great deal.

I would like to end my testimony in praise of our two great political parties. It is true, as some of our critics have pointed out, that the Constitution makes no mention of political parties. Some of the founding fathers may even naively have believed that the nation would be better off without them. Time and experience has taught a different lesson. For democracy to work there must be a coming together. We cannot all be independent. There must be somewhere we can go to join cause. For the current majority in this body it is the Republican party. For the minority and soon to be majority, I hope, it is the Democratic party. Let's not make the survival of these two great parties less likely by ill conceived reform. Let your focus be on strengthening them, and I can assure you that you will be serving the country well.

The CHAIRMAN. Mr. Bennett.

**TESTIMONY OF ROBERT T. BENNETT, STATE CHAIRMAN,
REPUBLICAN STATE CENTRAL AND EXECUTIVE COM-
MITTEE OF OHIO, COLUMBUS, OH**

Mr. BENNETT. Chairman Warner and Senator McConnell, I first want to thank you for the opportunity to be here today to offer my views on Federal campaign finance reform. I particularly enjoyed reading Senator McConnell's and hearing his opening statement, because I find myself almost in complete agreement with what he has said.

The CHAIRMAN. Senator McConnell is a student on this subject second to none.

Mr. BENNETT. I agree with you, Mr. Chairman.

I sit here not merely as an observer of politics but as a full-time state party chairman who is very much affected by Federal election law on a daily basis.

When considering Federal campaign finance reform, I believe it is vital for the committee to keep in mind the far-reaching effects of the legislation you may pass, legislation that, unless carefully crafted, may in fact have an adverse effect on the democratic process rather than the goal of involving more citizens in elections.

Political parties are not the enemy in the public's battle against special interests. Parties are not special interests but, rather, a vehicle by which individuals with a common philosophy of governance can affect the democratic process. There is no other forum through which the average citizen can have such a dramatic impact as through a political party.

Political parties are a fundamental link to informed citizens. A vast majority of what we do is simply providing information to voters. We tell voters who our candidates are, where they stand on the issues, and encourage them to vote. By associating with a particular party platform, a candidate tells a voter a lot about himself or herself which may assist the voter in making their choice. All of this contributes to informed citizens, which is essential to any democracy.

As to soft money, in Ohio we have 6.5 million registered voters. This year it will cost us in the neighborhood of \$2 million to effectively communicate with these voters. Some of that is so-called soft money. That is a lot of money, but it by no means is an attempt to buy an election or provide undue influence. Even spending \$2 million statewide in Ohio is only about 31 cents per voter. I do not think that our democracy would be better served by the parties not being able to spend the equivalent of a first class postage stamp in order to inform voters about our candidates.

As you go through this process of considering campaign finance reform, keep in mind that state and local county parties

are already under a tremendous burden of regulation by the Federal Election Commission.

Just one example. In 1988, we had four small county parties in Ohio that ran a newspaper slate advertisement with a picture of George Bush at the top of the ticket. The total cost of these ads was about \$400. But under Federal election law, they were considered illegal contributions to a presidential candidate. The Ohio Republican party intervened on behalf of the county parties and the Bush campaign reimbursed the \$400. But even so, it still cost the Ohio Republican party almost \$5,000 in legal fees to clear up the matter.

The whole process started as nothing more than local political organizations trying to inform voters who their candidates were and literally ended up being a "federal case." Do we really think democracy is better served by the Federal Election Commission telling county parties they can't run ads including their presidential, Senate, or congressional candidates? This is the type of bureaucracy that I'm suggesting needs to be reformed.

Anything that limits a party's ability to communicate with voters is really a disservice to democracy. Information is power in a democracy and we must have faith in our citizenry that more information, not less, will assist them in sorting out the wheat from the chaff when making their choice.

I am not advocating the elimination of Federal campaign regulations. I strongly supported campaign finance reform at the state level when a comprehensive bill was enacted in Ohio this past year. The result of Ohio's legislation was a strengthening of the local political parties. At the state level, we can now exercise greater influence than special interests, which is how it should be.

I recommend that, whatever you do, it is done with the thought that the political parties are not the problem but are part of the solution.

I thank you very much.

[The prepared statement of Mr. Bennett follows:]

PREPARED STATEMENT OF ROBERT T. BENNETT, CHAIRMAN, REPUBLICAN STATE CENTRAL AND EXECUTIVE COMMITTEE OF OHIO, COLUMBUS, OH

Mr. Chairman and Members of the Committee thank you for the opportunity to be here today to offer my views on federal campaign finance reform. I sit here not merely as an observer of politics but as a full-time state party chairman who is very much affected by federal election law on a daily basis.

When considering federal campaign finance reform I believe it is vital for the Committee to keep in mind the far reaching effects of the legislation you may pass. Legislation that unless carefully crafted may in fact have an adverse effect on the democratic process rather than the goal of involving more citizens in elections.

During your debate I hope you will keep in mind the role of political parties, and in particular, remember that we folks at the state and local level are involved in a lot more elections than just congressional or presidential races. In fact, the vast majority our efforts have nothing to do with federal elections. This year in Ohio 19 congressional races and the presidential election constitute the federal

portion of our efforts. This is contrasted by our involvement in over 900 state and local county races. Despite this fact the Federal Election Commission has determined through its allocation formula that 33 percent of all our expenditures fall under federal guidelines. This is federal intrusion on local elections.

Special Interests

Political parties are not the enemy in the public's battle against special interests. Parties are not special interests but rather a vehicle by which individuals with a common philosophy of governance can affect the democratic process. There is no other forum through which the average citizen can have such a dramatic impact as through a political party.

Political parties are a fundamental link to informed citizens. A vast majority of what we do is simply providing information to voters. We tell voters who our candidates are, where they stand on the issues, and encourage them to vote. By associating with a particular party platform a candidate tells a voter a lot about himself or herself which may assist the voter in making their choice. All of this contributes to informed citizens which is essential to democracy.

Soft Money

I know that so-called "Soft Money" is highly controversial but these funds are publicly reported along with all of our contributions. The idea that these funds freely flow into political parties has absolutely no merit. It is just as difficult to go out and raise these funds as it is to raise any other type of contribution.

Rather than some sinister plot to thwart free and fair elections, soft money is what gives us the resources to communicate with voters through things such as slate cards, absentee ballot applications, materials for volunteers to go door-to-door, and get-out-the-vote telephone calls.

In Ohio we have over 6.5 million registered voters. This year it will cost us in the neighborhood of \$2 million to effectively communicate with these voters. That is a lot of money, but it by no means is an attempt to buy an election or provide undue influence. Even spending \$2 million statewide in Ohio is only about 31 cents per voter. I do not think our democracy would be better served by the parties not being able to spend the equivalent of a first class postage stamp in order to inform voters about our candidates.

Burdensome Regulations

As you go through this process of considering campaign finance reform keep in mind that state and local county parties are already under a tremendous burden of regulation by the Federal Election Commission.

Many of our county parties want to run slate ads in their local newspapers in order to identify their local candidates with our candidate for congress or senator. Newspaper ads with federal candidates are considered mass communication under FEC guidelines and are therefore subject to federal election law. Before counties can run a slate ad they must check with the state party to ensure that we have not gone over our \$5,000 expenditure limit for the candidate since county party and state party contributions are cumulative under federal law. This means we must track the activity of each individual county to ensure that combined their newspaper advertising does not exceed our limit. This is another bureaucratic nightmare.

In 1988 we had four county parties that ran a newspaper slate advertisement with a picture of George Bush at the top of the ticket. The ads cost a total of about \$400 but were considered illegal contributions to a presidential candidate under the federal election law. The state party intervened on behalf of the county parties and the Bush campaign reimbursed the \$400 but even so it still cost us nearly \$5,000 in legal fees to clear up the matter. The whole process started as nothing more than local political organizations trying to inform voters who their candidates were and literally ended up as a federal case. Do we really think democracy is better served by the Federal Election Commission telling county parties they can't run ads including their presidential, senate, or congressional candidates? This is the type of bureaucracy that I'm suggesting needs to be reformed.

Anything that limits a party's ability to communicate with voters is a disservice to democracy. Yes our message is fiercely partisan, but that is why we have other

political parties. It is fundamentally wrong, and I believe constitutionally wrong, for any federal agency to have the power to limit our communications with voters. Information is power in a democracy and we must have faith in our citizenry that more information, not less, will assist them in sorting out the wheat from the chaff when making their choice.

I am not advocating the elimination of federal campaign regulations. I strongly supported campaign finance reform at the state level when a comprehensive bill was enacted this year. The result of Ohio's legislation was a strengthening of the political parties by allowing greater contributions than to political action committees or candidates. At the state level we can now exercise greater influence than special interests which is how it should be. I recommend that what ever you do it is done with the thought that political parties are not the problem but part of the solution. Thank you.

The CHAIRMAN. Thank you. These are very helpful contributions.

I will lead off with my question first to Mr. Brady. You quite properly advocate, and I agree, the strengthening of the two-party system. How should we treat third parties in terms of the regulations and the like?

Mr. BRADY. Are you talking about the independent third party expenditures?

The CHAIRMAN. Yes.

Mr. BRADY. There has to be some way that we can constitutionally regulate. I have been on both sides—that is, my party has been on both sides. We have been the beneficiary of their actions and we've been hurt by their actions. But as was pointed out in some of the prior testimony, it is now where they're spending far more than we can legally spend on a candidate. You know, that is absurd.

I don't know how you constitutionally regulate it, but we need to examine it and at least bring them into the same regulations that we have to adhere to.

The CHAIRMAN. Mr. Bennett, do you have views on that?

Mr. BENNETT. Mr. Chairman, I think third party expenditures by a single individual, I contrast that from third party expenditures by a group of individuals. I think that, constitutionally, you have to separate the two. There's no question in my mind that constitutionally, under free speech, an individual can advocate almost anything that he wants, either for or against a candidate, and spend money. We see this at the national level with some of our presidential candidates.

However, I think an association of individuals in any type of a group can be regulated as to expenditures within the political process. I think that the constitutional lawyers, of which I'm not—I was a tax lawyer for some 20-plus years—the constitutional lawyers could look at the issue from that viewpoint as opposed to a viewpoint of just saying it's unconstitutional for an association to get together and affect the political process.

It is a problem. I agree with Mr. Brady. We have been the beneficiary of third party expenditures and we have been the

victims of third party expenditures. Frankly, in both cases, we would have preferred not to see them take place.

The CHAIRMAN. Again back to you, Mr. Bennett. You note in your statement that the Federal Election Commission has determined that 33 percent of your expenditures fall under Federal guidelines.

Would you kindly explain how this was determined and what type of expenditures were actually covered, in your judgment?

Mr. BENNETT. Yes, Senator Warner. The Federal Election Commission has a formula—and there's no magic about this. Every other year in January, beginning with the odd years, you fill out a single sheet listing your elections in the next election cycle that Federal candidates participate in, and you allocate on a point basis and come up with a percentage.

This year we have two candidates for the Ohio Supreme Court, but we have most of our county officials that are on the ballot. Under the formula, we end up paying 33 cents involving overhead in Federal election dollars.

One of the things—and I recognize that Ohio is one of the largest States and we do have a full-time party operation in Ohio. But we were forced about 3 years ago, because of the problems of complying with all these rules and regulations, to hire a chief financial officer. We have a retired partner from Price Waterhouse who is our chief financial officer that takes care of all these things at a monthly cost to us, which is pretty substantial to the party.

This is the type of regulation that we can no longer just afford to have a bookkeeper taking care of the money, because we have to source it for both the State and Federal purposes and make sure it's in the right accounts, and then also make sure of the allocation as it goes out on the expenditure side. It's very complicated.

The CHAIRMAN. Senator McConnell.

Senator MCCONNELL. Picking up on that, that's how it is today. Can you imagine how much worse it would be under 1219, Chairman Bennett?

Mr. BENNETT. I do not support the provisions of 1219, where it affects the so-called soft money. I think it has some good provisions, but those that impact the state parties, particularly in trying to regulate what we can do at the grassroots level.

People have a misnomer of what you can use so-called soft money for. You are limited to generic party programs, such things as absentee ballot programs, slate card programs that benefit your ticket from the top to the bottom, generic telephoning, getting out the vote drives and those types of things. That would adversely impact the parties under 1219 because it also goes in and regulates those portions that are not regulated right now.

Senator MCCONNELL. In fact, under S. 1219—this is not directed at parties, per se—but under S. 1219, there would be a

speech limit for every congressional candidate in America and every Senate candidate in America, and the Federal Election Commission, of course, would be there to make sure nobody spoke too much, and then try to enforce the speech limits.

We have an experience with that at the FEC in the one race in America that has spending limits today that they regulate, and that's the Federal presidential race. We know the audits usually get finished 4 or 5 years after the race is over. Can you imagine—I don't think anybody really knows how big the FEC would have to be to engage in all of this speech control, but I just wonder if you have any sense of what the size of the agency might have to be to regulate all of this speech.

Mr. BENNETT. Senator McConnell, as I have watched the Federal Election Commission grow substantially since its inception back in the Seventies, it used to be they only audited the presidential campaigns. Then they kind of spread out and they picked up the congressional campaigns on both the Senate and House side. Then they went to state parties and now they're down to local parties. So it is not unusual for us to have Federal Election Commission auditors in our office going over the books and records on a regular basis.

That's been the growth in the bureaucracy. If you extend that beyond what we're talking about now and apply it to the counties—we have 88 counties in Ohio, and I imagine there would be a ten-fold increase in the agency just to handle the auditing functions.

Senator MCCONNELL. Well, it would be a massive bureaucracy. It would be a legacy of the 104th Congress, that it built one of the biggest Federal bureaucracies in the history of the country in order to regulate the speech of candidates. I'm relatively confident that that isn't going to happen, but that would be the legacy.

Finally, let me just say that the proponents of S. 1219 say it is designed to sort of control the special interests. Special interests is an interesting term. I always apply it to the groups that are against what I'm trying to do. In fact, the term special interest is impossible to define, because everybody uses it as a pejorative term to describe those who are opposing what they think is in the best interest of America.

Ironically, S. 1219 weakens the parties and strengthens the special interests, in the name of going after special interests. I would assume that both of you would agree with me, that a party is not a special interest. I assume, Mr. Brady, that you support all nominees of the Democratic party, whether they are conservative or liberal. I assume, Mr. Bennett, that you support all the nominees of the Republican party.

Mr. BENNETT. Absolutely.

Senator MCCONNELL. Do either of you believe that your political party is a special interest that should be controlled, as if you were promoting some legislative agenda?

Mr. BRADY. I don't view us as a special interest. I think in the overall context, I think some of the pundits believe that all people that are involved in the political system are somehow special interests, but I don't buy that.

Mr. BENNETT. Senator, I think my remarks are very clear, that I do not regard the parties as special interests. I think they are a common political philosophy and it's a pretty bit tent. If you look within the Republican party specifically, we have all shades, colors, stripes, political philosophies in that tent, and I think that's what makes up any of the great parties, either one of the two parties.

Senator MCCONNELL. The truth of the matter is, America is full of special interests.

Mr. BENNETT. Absolutely.

Senator MCCONNELL. And special interests are protected by the Constitution. And here we have a bill allegedly being put forward to regulate special interests, when, in fact, Americans have a constitutional right to belong to groups promoting their various concerns, to petition the Congress, to be involved in campaigns, to speak loudly, to try to carry the day. That's the base of this democracy, is it not?

Mr. BENNETT. I couldn't agree with you more.

I think the problem is, Senator, that there's a perception out there about the money and politics, the growth of the money and politics, particularly over the last 20 years, that has brought great concern to the American people. I think the accountability of where they money is coming from and where it's going is the thing that is most important to the American people.

Up until recently, we had no contribution limits in Ohio to our candidates on a statewide basis. Our governor received contributions in excess of \$100,000 from some individuals. These were fully disclosed. The people had an opportunity to react to those types of contributions and to form a judgment on them. His acceptability of that had no impact on the election at all, but they were fully disclosed to the public.

Senator MCCONNELL. If the public knew that we spent less in the last cycle than we spent on potato chips, I think they would probably be a little less concerned about campaign spending.

Mr. Chairman, I'm done.

The CHAIRMAN. I would like to conclude with one observation, and a question.

As I look back on many happy years in campaigning—we talked about money today, but I find the most valuable asset of any campaign of which I have been involved, for myself or for others, has been the volunteers. It is so heartening to see people come forward and give of their time without any compensation, because they believe in the candidate and the candidate's goals, and they just work feverishly. It doesn't matter what task it is, whether it's putting up signs or writing petitions or policy papers, they want to be a part of the American system.

Mr. Brady, I notice you have concern about the FEC regulation as it relates to volunteers. I want to sort of shake that tree out here a little bit and see what the problem is.

Mr. BRADY. Well, it's communicating with them. I don't think—

The CHAIRMAN. Who's "them"? Communicating with whom?

Mr. BRADY. The party cannot effectively communicate with even volunteers or our own members under some of the regulations that have been enacted.

Again, I think the FEC—I'm not critical of them, and I think they're trying to follow what they think the intent of Congress was. I think it comes back to—

The CHAIRMAN. Then I expect we should clarify that, if there's a problem.

Mr. BRADY. That's right.

The CHAIRMAN. I'm going to focus on that. This is the first time I have seen a concern.

Mr. BRADY. Of course, we don't think their regulations—again, as my remarks have pointed out, they haven't kept up with the technology that's used in campaigns today, about e-mail and fax machines and other forms of modern day communications. We think that ought to be addressed and we would support your efforts in doing that.

The CHAIRMAN. Mr. Bennett, any views?

Mr. BENNETT. Well, Senator Warner, I think the FEC is a problem. I firmly believe that the party that takes advantage of the emerging technology is going to lock down pretty much a pretty good majority as we go into this next millennium.

We have taken advantage of that. We were the first State Party to go on the World Wide Web, and we had the privilege of the first broadcast over the Internet when the Speaker Gingrich was in Columbus, Ohio back in October. So we're taking advantage of these. But again, the cost is allocated between the Federal and the State level on the allocation formula.

So we have to raise a lot of Federal dollars to make that investment in the equipment and technology that we're bringing on board, so it is an impact, with the limitations that you presently have, and, of course, you're trying to take care of your Federal candidates, too, to the maximum allowed under the Federal Election Commission.

The CHAIRMAN. The record of this hearing today will remain open for about 72 hours.

Thank you all very much.

[Whereupon, at 12:25 p.m., the committee was adjourned.]

CAMPAIGN FINANCE REFORM

WEDNESDAY, MAY 8, 1996

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 9:36 a.m., in Room SR-301, Russell Senate Office Building, Hon. John Warner, chairman, presiding.

Present: Senators Warner, McConnell, Cochran, Ford, and Dodd.

Staff Present: Grayson Winterling, Staff Director; Edward H. Edens IV, Special Assistant to the Chairman; Bruce E. Kasold, Chief Counsel; Virginia C. Sandahl, Chief Clerk; Mary Louise Faunce, Administrative Assistant to the Staff Director; Kennie L. Gill, Democratic Staff Director and Chief Counsel; and John L. Sousa, Democratic General Counsel.

The CHAIRMAN. The committee will come to order.

Today the committee is holding its fifth hearing this year on campaign finance reform. Our sixth hearing will be next week, May 15. This series of hearings has been designed to permit the examination and full discussion of this very important subject.

Those who have been following the hearings know that the witnesses who have come to testify have, indeed, covered a wide range of issues and presented a broad spectrum of views on the type of reform that would be most beneficial.

We have, for example, heard from several Senators—McCain, Feingold, Thompson, Wellstone, Feinstein, and Bradley—about legislation that they had proposed, as well as from Members of the House—Cong. Shays, Meehan, and Smith—who testified on legislation they introduced in the House of Representatives.

Distinguished counselors have also come before this committee raising what I regard as very serious concerns about the constitutionality of a number of the provisions in the proposed legislation. And we heard pros and cons from various aspects of campaign finance reform from prestigious policy institutes—the Cato, the Rockefeller, and the Brookings—and the Heritage Foundation, as well as general calls for significant reform by a number of advocate groups.

Several organizations and citizens have testified about the impact of campaign finance reform proposals that would eliminate political action committees, PAC's, and the bundling of funds, an impact that could hinder the ability of the average citizen to join together in support of their common goals. And some witnesses have spoken strongly about the unfairness of permitting organizations with mandatory membership to use membership dues to conduct partisan political activities.

In the course of these hearings, we also learned about the costs and management problems associated with the proposals that candidates for election be given reduced fee postage, mailing. Implementing this type of proposal would necessarily mean increased mailing costs for the American postal user across the board. And any discussion of this issue should address head-on the fact that postal users will be required to pay for the campaign of someone they may or may not want to support.

During these hearings, a panel of experts presented some thought-provoking ideas that should be considered in any campaign reform evaluation, such as increasing the limits on contributions to facilitate the raising of funds, limits which have not been raised in over 20 years. We also heard from the Chairmen of the Republican and Democratic National Committees about the very important role of political parties in campaigns and the decreased role these parties would play if their ability to support State candidates were curtailed.

Today the committee will receive testimony from two panels of experts on the issue of campaign finance. They will share their analysis and judgment on the need for campaign reform, as well as the degree and type of reform that they believe is both helpful and necessary to enhance public participation and confidence in our Democratic form of government and elections.

As previously stated, our next hearing will be held on May 15, at which time we will have representatives from the broadcast industry testifying about the impact of the reduced fee proposals.

Finally, as we proceed through these hearings and come to some conclusion, it remains my utmost concern that the Congress not pass legislation which cannot—and I repeat this—cannot survive constitutional review in the Federal court system. That is this Senator's bottom line. I do not want to hold up to the American public that we have devised some type of campaign finance reform when we know from our own research there is a strong likelihood that the Federal courts will strike it down. I think that would be a disservice to the American people, indeed to our whole system.

I want to thank again my distinguished ranking member for his cooperation throughout these hearings. Mr. Ford?

Senator FORD. Thank you, Mr. Chairman.

As you know, at previous hearings I have asked that, instead of concentrating on what we can't do, the focus of these hearings

be directed at what we can do to reform campaign financing. We have heard a lot about what we can't do to reform the system, either because of asserted constitutional problems—you know, we all become great constitutional experts when we are against this bill and it won't pass muster, and so all you have to do is say, well, this won't pass constitutional question—or a matter of policy. Those are the only two questions we get into.

I am pleased that the witnesses this morning have directed their attention on what may be done that is constitutional, or on positive proposals for reform. While I personally have reservations about some of these reform proposals, just as I have about some of the provisions in the bills under consideration, they do give us the opportunity to review and discuss some new or different proposals for reform. And I wish to thank our witnesses this morning for contributing their views on the constitutionality of proposals in the bills and their proposals for reforms they believe will improve the system.

Now, my chairman has said this is the fifth hearing, and we are going to have the sixth hearing. I see the professor here who was appointed in 1990 by Senator Dole and Senator Mitchell to form a campaign finance reform committee. This horse has literally been beaten to death. And, Mr. Chairman, I know that some people don't want it, and I understand that. But, for gosh sakes, let's at some point cut it off and start marking this bill up in the committee. I hope the next hearing will be the last and then we can get down to the meat of the subject. And if it isn't constitutional, the Supreme Court will tell us. The only thing we can get is the best opinion available, whether it is constitutional or not. And we have to mark those things out and then try to do what we can do.

So, Mr. Chairman, I look forward to hearing the witnesses this morning, and I thank you for your continued leadership in our efforts to make some reform in our campaign financing system. Thank you, sir.

The CHAIRMAN. If I might just ask my distinguished colleague, would you suggest we not have our May 15 hearing?

Senator FORD. No, sir. I am not—

The CHAIRMAN. Well, it seems to me—

Senator FORD. I am not trying to tell you how to run the committee. I am just trying to tell you that I think we have beat this horse to death, and that will be the sixth. And at the end of that, I would hope we could get to markup.

The CHAIRMAN. I understand that point, but I think that May 15 hearing will bring to bear some facts and opinions which are essential—

Senator FORD. Mr. Chairman, I—

The CHAIRMAN. —to our deliberation on the various proposals, particularly in the McCain legislation.

Senator FORD. Mr. Chairman, I am not trying to tell you how to run this committee. The only thing I—

The CHAIRMAN. No, but you—

Senator FORD. I am asking you at some point, let's—it will be six hearings, you know.

The CHAIRMAN. I understand that.

Senator FORD. We keep hearing almost the same thing over and over. The same questions are asked over and over.

The CHAIRMAN. We respectfully have a different viewpoint on that, and I feel that the broadcast industry—so far the hearing record of this committee and my predecessor have not given the broadcast industry, in my judgment, the full opportunity that we hope to give them on May 15.

Senator FORD. Well, they get the publicity every day offering free time to the Presidential candidates, and they are going to come in here and say they are all for free time and they are going to donate it—at least some of them are. I think four networks now, if you include CNN, have offered free time. We are talking about half price. They will be getting more money than they would by offering free time.

The CHAIRMAN. But I say to my colleague, the Presidential election certainly is important. But what about all the congressional? I mean, if you are going to do it for the Presidential, are you going to cut it off for the congressional? Therein it seems to me—

Senator FORD. It is a decision—

The CHAIRMAN. —is the heart of the McCain legislation.

Senator FORD. It is a decision this committee is going to have to make and the Congress is going to have to make. It is not whether you like or I don't, either one. And we want to hear the witnesses this morning. You have heard enough of us.

The CHAIRMAN. Well, that is true. But I want to make sure that our colleagues in the Senate have the benefit of the most complete record that we can compile as a committee.

Senator FORD. And we are getting there.

The CHAIRMAN. Would you have a view, Mr. McConnell?

Senator MCCONNELL. Thank you, Mr. Chairman.

I have enjoyed over the last decade numerous discussions with Professor Alexander, Professor Sabato, and Norm Ornstein about this issue. The reason we have been reluctant to act is, of course, that virtually all of these proposals would trash the First Amendment, and it is appropriate that the Congress would be reluctant to do that.

All three of these gentlemen have expressed their opposition to spending limits in the past. I assume that is still their view. And these are distinguished scholars who know a good deal about this subject, and I look forward to hearing from them once again.

The CHAIRMAN. Thank you. I am just going to take a minute. I think it is important that the viewers who are going to look at this hearing today have a little idea about the distinguished panel we have before us.

Dr. Sabato, whom I know very well—I have appeared in his classes at the University of Virginia—is an election analyst and Robert Kent Gooch Professor Government and Foreign Policy at the University of Virginia. He is a former Rhodes scholar and Danforth fellow. On receipt of the Rhodes scholarship, he left for Oxford University where he received his doctorate in politics. He was then invited to become an instructor for students in the politics, philosophy, and economics program.

In January 1978, he was elected lecturer in politics at the New College Oxford, and in September of that year he joined the faculty at the University of Virginia. And as I said, I have had the privilege of being with you in your class, and I have always started every lecture by saying you are the Oracle of Delphi as it relates to this subject. I do that with respect, though. You have spent a great deal of your life and written extensively on these issues.

Herbert E. Alexander is a Professor of Political Science at the University of Southern California and is Director of the Citizens' Research Foundation, which is an autonomous entity within the university. He has become a consultant to numerous State agencies, including New Jersey Election Law Enforcement Commission, the New York City Campaign Finance Board, and the U.S. Senate Campaign Finance Reform Panel in 1990.

Norman J. Ornstein. Mr. Ornstein is a resident scholar at the American Enterprise Institute for Public Policy Research. He serves as an election analyst for CBS News. He was a series editor and co-host with Edwin Newman of "Congress, We the People," an award-winning 26-part television series that aired nationally in 1984-85. He is now active in classrooms around the Nation. We welcome you.

Thank you. Professor Sabato, will you lead off, please?

TESTIMONY OF A PANEL CONSISTING OF LARRY J. SABATO, PROFESSOR OF GOVERNMENT AND FOREIGN AFFAIRS, UNIVERSITY OF VIRGINIA, CHARLOTTESVILLE, VA; HERBERT E. ALEXANDER, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF SOUTHERN CALIFORNIA, LOS ANGELES, CA; AND NORMAN J. ORNSTEIN, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, WASHINGTON, DC

Mr. SABATO. Thank you very much, Senator. I appreciate your kind remarks, and you are already an honorary member of the University of Virginia faculty you have been in my classes so often, and I appreciate that very much.

The CHAIRMAN. Both honorary and honorable.

[Laughter.]

Mr. SABATO. And the salary is quite low, unfortunately. That is true for all of us in academe.

I had to chuckle at Senator Ford's remarks because it really is true. There has been no major substantive change in the law since 1979, but I guess every year or two I see Norm and Herb and all of you as we give additional testimony on this subject. It is kind of a full employment act for political scientists, and in a way, I hope you don't end it. I hope it continues on for another decade or two.

Nonetheless, I think Senator Ford is—

Senator FORD. You are younger than I am. I hope you can last.

[Laughter.]

Mr. SABATO. But I can also sympathize, and I think there are some problems that do need reforming.

The CHAIRMAN. Professor, if I might ask your indulgence, we have been joined by our distinguished colleague from Mississippi. Would you care to make some opening remarks?

Senator COCHRAN. Thank you, Senator. I was delighted to see the news reports of the networks and CNN agreeing to make time available for candidates in the Presidential election. You may have already touched on that, but that to me responds to some of the suggestions that some of our witnesses have made in the past.

I think Norm was quoted as saying it is not as much as it ought to be, or something to that effect, but it is a good piece of news to start off the day. And I congratulate you again, Mr. Chairman, on staying with this issue and getting those who know something about it and have experience working with it to come before the committee and help make sure we are up to date on all the options available to us for reform.

The CHAIRMAN. I thank my colleague.

Professor Sabato?

Mr. SABATO. Senator, what I would like to do—and I have submitted written testimony, so I am not going to read the testimony. I would just like—

The CHAIRMAN. Without objection, we will admit the entire statements of all witnesses today into the record.

Mr. SABATO. Thank you, Senator. In just a few moments, I would like—

The CHAIRMAN. If you might indulge us once more, we have a very distinguished colleague—

Senator FORD. We have a vote at 10 o'clock.

The CHAIRMAN. It is the proposal of the Chair that I will remain until another member comes back so that we can continue with our testimony throughout that vote.

Senator Dodd, we welcome you this morning.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Would you like to make some opening comments?

Senator DODD. No. Let's get right to our witnesses, and I look forward to their testimony.

The CHAIRMAN. Thank you very much. Thank you, Professor.

Mr. SABATO. Senator, what I wanted to do in just a few moments was to refocus the debate a little bit. The debate on campaign finance has gotten awfully stale, in part because it has gone on for so many years, and it is focused very, very narrowly by many of the groups that are set up to promote this particular issue. And I think it ought to be a much broader debate than it is.

For that reason, I join forces with a Wall Street Journal reporter, Glenn Simpson, to produce a book that has just been published. My publisher told me to hold it up to the cameras, but there aren't any, so I will just leave it here on the table. Oh, is there one?

The CHAIRMAN. Yes.

Mr. SABATO. Okay, here.

Senator FORD. You can't sell anything here.

Mr. SABATO. I am just kidding.

The CHAIRMAN. You should give the title of it, though.

Mr. SABATO. May I give the title?

Senator DODD. You can sell things here. You just can't accept it for free.

[Laughter.]

Mr. SABATO. I will give them away, Senator. That may be how we distribute them.

But, in any event, the book is entitled "Dirty Little Secrets: The Persistence of Corruption in American Politics," and in the book we try to broaden the debate about campaign finance reform, because it has been so narrow.

We do confirm the legitimacy of some of the alarms that the reformers have sounded, but we believe they are focusing on the wrong corruptions. There are other corruptions in politics far more serious than the ones they cite over and over again, and they have over the years. Some of the bigger problems I think are surprising and have escaped a great deal of press attention. I think those of you running for elective office are much more familiar with these than are members of the press, which frequently go to the reform groups that focus on those same old problems over and over.

Some of these other problems include the resurgence of dirty tricks. Now, some forms of opposition resurgence are perfectly legitimate, but I am talking about the resurgence of private investigators and spies and moles, the use of eavesdropping devices, breaking into private credit databases, the circulation of private health records and the like. We are very much at a pre-Watergate stage again. And if you look at American history, you see three great mega-scandals in American History: Credit Mobilier in the 1870's, exactly 50 years later Teapot Dome in the early 1920's, exactly 50 years later Watergate in the early 1970's. Now, according to that schedule, we wouldn't face another mega-scandal until 2023, but in this highly technological,

sped-up world of ours, things frequently arrive ahead of schedule, and I think they are.

In addition to the resurgence of dirty tricks, a new technique called "push polling" has come on the scene, and some of you may have been the victims of it in past election seasons. I call it "The Nightmare on Telemarketing Street," because it is attack telephoning. It is flooding a district or a State with hundreds of thousands of calls right prior to an election with highly negative information about one of the candidates. Frequently, the information is totally false, designed merely to malign a candidate and not give that candidate an opportunity to respond.

We have more than three dozen examples in the book. Just to cite one from 1994 that was used in seven States that we could identify, callers right ahead of an election would call thousands of voters in a district and ask this question, after pretending to be a pollster taking regular poll questions, and they would say: "If you knew that your Congressman were gay, would you be more or less likely to vote for Congressman X?", whoever that might be. And the obvious implication there—they didn't say that Congressman X was gay—but the implication of the question was very, very clear. So push polling is a major new campaign scandal.

Street money has become worse, not better, over the years, and I am talking about not just buying votes but buying the endorsements, particularly in minority areas, forming shell organizations to hide the transfer of funds to community leaders, preachers, and others. This is a scandal and a corruption that the press has not touched for various reasons.

And, finally, despite the view of the press and public, vote fraud is back and in a major way. In some States—and we have focused on half a dozen—the dead are showing up at the polls again. I had one operative defend this by saying that many of them missed many elections in their lifetimes and they were just making up for it later on. Pets and children have been registered to vote. The comatose in health care facilities are being voted. There are shenanigans involving absentee and mail ballots of all kinds all across the country; old-fashioned and new-fashioned payoffs that I can describe if you are interested.

To me, these are serious corruptions. They are major problems. They are far more important than many of the ones that the reformers focus on. And, therefore, the solutions in campaign finance reform ought to be appropriately broader to take into account many of these problems. The solutions that are so often discussed, in my view, are suspect for many reasons. And, yes, I certainly believe that there are First Amendment problems with many of them, and they are unconstitutional, Senator. But I think there are other problems connected to them. I think of spending limits. I oppose spending limits not only because I think they are unconstitutional, not only because I

think they favor incumbents rather than challengers, but because there is no such thing as a spending limit. It is a phony proposal, and I speak particularly to the McCain-Feingold proposal and all of its predecessors. And I am very fond of Russ Feingold. We were classmates together for a number of years. But on this, I thoroughly disagree with him.

There is no such thing as a spending limit. When you look at the ways that you can get around spending limits, with overground spending and underground spending, whether it is independent expenditures or whether it is party and non-party soft money, or whether it is non-express advocacy spending or whatever it might be. And we invent a new one with almost each passing year. It ought to be clear to everyone that there is no such thing as a spending limit, and to propose them and to enact them into law is to guarantee an increase in cynicism once they don't work, which will become apparent to voters and to everyone else very quickly.

Secondly, public funding is often proposed, and I am not opposed to certain forms of public funding, as I am going to discuss. But it is simply not a popular scheme, and I don't believe that credibly it is going to be passed. And so we can talk about it endlessly, but most voters don't want their tax money spent for politicians' campaigns.

Also, I think many of the proposals involve more regulation. And if there is one thing we have learned in looking at the actions of the Federal Election Commission and their interpretation and the court's interpretation of election law over the years, it is that regulation is stifling true grassroots activity all across the country—true grassroots activity as opposed to phony astroturf grassroots activity, which is assisted in some ways by the law.

So, in my view, the proper focus of campaign finance reform is a different scenario. Inevitably, we focus on disclosure because sunshine is the best disinfectant for many of these problems, along with some practical reforms: if it is voter fraud, thumbprint scanners; if it is street money, all payments being made by check, eliminating the role of cash, and New Jersey has recently done this; in the case of push polling, to force disclosure of the poll's sponsor in every telephone call.

There are some very practical, simple solutions to those problems. But, in general, it is disclosure. And my partner and I have put together a plan that we call deregulation plus. It is a new proposal, it is a new idea for campaign finance reform. It relies on an informed marketplace, the voters being the ones informed by the press, by the Federal Election Commission, by other election agencies, an informed marketplace in which we deregulate the system—and most of the regulations aren't working anyway. We deregulate the system. We refocus and rechannel the limited resources that we have in the campaign finance area to improving disclosure, to getting more of the

money on the table before the election and explain to the voters. We want to do this by raising individual contribution limits, which, after all, are worth less than a third of what they were worth when the limits were originally passed. And there ought to be a permanent inflation indexing put on those limits.

We want to reduce regulation in lots of different ways, including and especially on political parties, which are the great organizing and stabilizing institutions of our democracy.

We want to broaden disclosure to include organizations that spend millions and millions of dollars in politics that currently aren't forced to disclose, including labor unions, including Christian Coalition. It runs from the left to the right. We want to include full contributor and expenditure disclosure, which currently, unfortunately, is not always disclosed in the FEC forms.

We favor free television time of various varieties, and certainly the networks have made progress in that arena. Notice all of the provisos they are attaching to their proposals about free time. It would be much better if it were prime time. It would be much better if it were nightly in the last few weeks of an election campaign. It would be much better if it were simulcast. But it is, as Paul Taylor put it, "a sweet half-loaf," and we favor free-time proposals.

We favor a tax credit for small gifts. We used to have this before 1986, and, unfortunately, it was done away with in the 1986 tax reform. Now, that is a kind of public funding, but it is a good kind of public funding because it is individually directed, and it brings more small money into the system. And to the extent that more small money is brought in, the large gifts will become a little less important.

We also favor, finally, streamlining the FEC in lots of different ways: term limits for members so they can act more independently—we would favor one 6-year term without renewal. We would favor the addition of a tie-breaker, with the six current members of the FEC, appointing that seventh tie-breaker member. We would favor a tax check-off with people allowed to devote perhaps \$1 to the FEC. Given the very low participation rate in the Presidential election campaign fund, you may wonder why people would give to the FEC. If it were made clear that this was to increase disclosure, to make it clear to people where the money was coming from and where the money was going, we think that check-off would be more popular than the current Presidential election campaign fund.

In conclusion—and we can discuss more of these reforms in detail, if you want. But, in conclusion, the public is demanding a certain kind of campaign reform. They are concerned about political ethics. They are concerned about the campaign process. They see lots of practices they regard as being highly negative and distasteful. But it is important to realize that that demand is very generalized. It is important that the reform be the right

reform, that it be reforms without unintended consequences, that it be reforms that are targeted to the major ills, the serious problems, and not minor problems that may be blown up by press or public interest groups.

So we favor reform, but the right type of reform. We do ask a question, as Senator Ford, I think, would: Where will we be in 10 years if we have no reform at all of any of these serious problems? And I think we will be well on our way to another mega-scandal, and that is something that all of us want to avoid.

Thank you, Senator.

[The prepared statement of Mr. Sabato follows:]

PREPARED STATEMENT OF PROFESSOR LARRY J. SABATO, DEPARTMENT OF
GOVERNMENT AND FOREIGN AFFAIRS, UNIVERSITY OF VIRGINIA¹

Phony Cures versus a Workable Solution: Deregulation Plus

The campaign finance system's problems are vexing. Is it possible to fashion a solution to all of them simultaneously? Over the years, the reformers' panacea has been taxpayer financing of elections and limits on how much candidates can spend. Public financing is a seductively simple proposition: if there is no private money, presumably there will be none of the difficulties associated with private money. But in a country such as ours, which places great emphasis on the freedoms of speech and association, it is unrealistic to expect that the general citizenry or even many of the elite activists will come to support greater federal subsidization of our election system at the cost of their individual and group political involvements. Spending limits are also enticing. Are politicians raising and spending too much money? Let's pass a law against it! Yet such a statute may be difficult to enforce in an era when politicians and the public seek less regulation, not more—not to mention the serious, maybe fatal, problem of plugging all the money loopholes (the C(4)s; Supreme Court-sanctioned, unlimited "independent expenditures" by groups and individuals unconnected to a campaign, and so on). Once again, the biggest, the original, and the unpluggable loophole is the First Amendment.

Public financing and spending limits are both also objectionable on the basic merits: the right to organize and attempt to influence politics is a fundamental constitutional guarantee, derived from the same First Amendment protections that need to be forcefully protected. To place draconian limits on political speech is simply a bad idea. (The call for a ban on political action committees suffers from the same defect.)

Once again, even if candidates could be persuaded to comply voluntarily with a public financing and spending limits scheme, such a solution would fail to take into consideration the many ways that interest groups such as the Christian Coalition and labor unions can influence elections without making direct contributions to candidates. Even if we passed laws that appeared to be taking private money out, we would not really be doing so. This is a recipe for deception, and consequently—once the truth becomes apparent—for still greater cynicism.

In our opinion, there is another way, one that takes advantage of both current realities and the remarkable self-regulating tendencies of a free-market democracy, not to mention the spirit of the age. Consider the American stock markets. Most government oversight of them simply makes sure that publicly traded companies accurately disclose vital information about their finances. The philos-

¹ This is an excerpt from the just published book, "Dirty Little Secrets: The Persistence of Corruption in American Politics," (New York Times Books), by Larry J. Sabato and Glenn R. Simpson. All rights reserved.

ophy here is that buyers, given the information they need, are intelligent enough to look out for themselves. There will be winners and losers, of course, both among companies and the consumers of their securities, but it is not the government's role to guarantee anyone's success (indeed, the idea is abhorrent). The notion that people are smart enough, and indeed have the duty, to think and choose for themselves, also underlies our basic democratic arrangement. There is no reason why the same principle cannot be successfully applied to a free market for campaign finance.¹ In this scenario, disclosure laws would be broadened and strengthened, and penalties for failure to disclose would be ratcheted up, while rules on other aspects—such as sources of funds and sizes of contributions—could be greatly loosened or even abandoned altogether.

Call it *Deregulation Plus*. Let a well-informed marketplace, rather than a committee of federal bureaucrats, be the judge of whether someone has accepted too much money from a particular interest group or spent too much to win an election. Reformers who object to money in politics would lose little under such a scheme, since the current system—itsself a product of reform—has already utterly failed to inhibit special-interest influence. (Plus, the reformers' new plans will fail spectacularly, as we have already argued.) On the other hand, reform advocates might gain substantially by bringing all financial activity out into the open where the public can see for itself the truth about how our campaigns are conducted. If the facts are really as awful as reformers contend (and as close observers of the system, much of what we see is appalling), then the public will be moved to demand change.

Moreover, a new disclosure regime might just prove to be *the* solution in itself. It is worth noting that the stock-buying public, by and large, is happy with the relatively liberal manner by which the Securities and Exchange Commission regulates stock markets. Companies and brokers (the candidates and consultants of the financial world) actually *appreciate* the SEC's efforts to enforce vigorously what regulations it does have, since such enforcement maintains public confidence in the system and encourages honest, ethical behavior, without unnecessarily impinging on the freedom of market players. Again, the key is to ensure the availability of the requisite information for people to make intelligent decisions.

Some political actors who would rather not be forced to operate in the open will undoubtedly assert that extensive new disclosure requirements violate the First Amendment. We see little foundation for this argument. As political regulatory schemes go, disclosure is by far the least burdensome and most constitutionally acceptable of any political regulatory proposal. The Supreme Court was explicit on this subject in its landmark 1976 *Buckley v. Valeo* ruling. The Court found the overweening aspects of the Federal Election Campaign Act (such as limits on spending) violated the Bill of Rights, but disclosure was judicially blessed. While disclosure "has the potential for substantially infringing the exercise of First Amendment rights," the Court said, "there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the free functioning of our national institutions is involved."

The Court's rationale for disclosure remains exceptionally persuasive two decades after it was written:

First, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to

¹ We are indebted to attorney Jan Baran of the law firm Wiley, Rein & Fielding for this analogy.

be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And . . . full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements [the Congress] may have been mindful of Mr. Justice Brandeis' advice: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."¹

A new disclosure-based regime, to be successful, would obviously require more stringent reporting rules. *Most important, new reporting rules would require groups such as organized labor and the Christian Coalition to disclose the complete extent of their involvement in campaigns.* Currently, such groups rely on a body of law that holds that under the First Amendment, broadly based "nonpartisan" membership organizations cannot be compelled to comply with campaign finance laws, nor can groups that do not explicitly advocate the election or defeat of a clearly identified candidate. However, expert observers of the current system, such as former Federal Election Commission chairman Trevor Potter, believe the Court has signaled that constitutional protection for such groups extends only to limits on how much they can raise or spend, not to whether they are required to disclose their activities.² The primary advantage of this step is that it would formally bring into the political sphere groups that clearly belong there. By requiring organizations such as the Christian Coalition and labor unions to disclose, their role in elections can be more fully and fairly debated.

Another possible objection to broadening the disclosure requirements would be the fear that the rules would drag a huge number of politically active but relatively inconsequential players into the federal regulatory framework. Clearly, no one wants the local church or the Rotary Club taken to court for publishing a newsletter advertisement that indirectly or directly supports candidates of their choice. To our mind, this is easily addressed by establishing a high reporting threshold—something between \$25,000 and \$50,000 in total election-related expenditures per election cycle. After all, the concern is not with the small organizations, but the big ones. The Christian Coalition, the term limits groups, and organized labor have all raised and spent millions of dollars annually and operated on a national scale. It is not hard to make a distinction between groups such as these and benign small-scale advocacy.

Another necessary broadening of disclosure would involve contributions made by individuals. While most political action committees already disclose ample data on their backers and financial activities, contributions to candidates from individuals are reported quite haphazardly. New rules could mandate that each individual contributor disclose his place of employment and profession, without exception. The FEC has already debated a number of effective but not overly oppressive means of accomplishing this goal (although to date it has adopted only modest changes). The simplest solution is to *prohibit* campaigns from accepting contributions that are not fully disclosed. Disclosure of campaign *expenditures* is also currently quite lax, with many campaign organizations failing to make a detailed statement describing the purpose of each expenditure. It would be no great task to require better reporting of these activities as well.

¹ *Buckley v. Valeo*, 424 U.S.1, at 66-7 (1976).

² Interview with Trevor Potter, July 12, 1995.

The big trade-off for tougher disclosure rules should be the loosening of restrictions on fundraising. Foremost would be liberalization of limits on fundraising by individual candidates. This is only fair and sensible in its own right: there is a glaring disconnection between the permanent and artificial limitations on sources of funds and ever-mounting campaign costs. One of the primary pressures on the system has been the declining value in real dollars of the maximum legal contribution by an individual to a federal candidate (\$1,000 per election), which is now worth only about a third as much as when it went into effect in 1975. This increasing scarcity of funds, in addition to fueling the quest for loopholes, has led candidates (particularly incumbents) to do things they otherwise might not do in exchange for funding. Perversely, limits appear to have increased the indebtedness of lawmakers to special interests that can provide huge amounts of cash by mobilizing a large number of \$500 to \$1,000 donors. By increasing contribution limits, candidates would enjoy more freedom to pick and choose among their contributors. Given the option, we hope more candidates would turn primarily to those contributors whose support is based on values and ideological beliefs, spurning the favor-seekers. By lifting disclosure and contribution levels at the same time, politicians' access to "clean" funds would rise while scrutiny of "dirty" funds would be increased. The idea is to concede that we cannot outlaw the acceptance of special-interest money, but the *penalties* for accepting it can be raised via the court of public opinion. So at the very least, the individual contribution limit should be restored to its original value, which would make it about \$2,800 in today's dollars, with built-in indexing for future inflation. We would actually prefer a more generous limit of \$5,000, which would put the individual contribution limit on a par with the current PAC limit of \$5,000 per election.

For political parties, there seems little alternative to simply legitimizing what has already happened *de facto*: the abolition of all limits. When the chairman of a national political party bluntly admits that millions of dollars in "soft money" receipts mean that the committee will be able to spend millions of dollars in "hard money," it is time for everyone to acknowledge reality. Moreover, such an outcome is not to be lamented. Political parties *deserve* more fundraising freedom, which would give these critical institutions a more substantial role in elections.

How would the new disclosure regime work? While the FEC has already moved to impose some tighter disclosure requirements, it lacks the resources as currently constituted to enforce the new rules across the board. However, the solution does not necessarily require a massive increase in funding. Under a disclosure regime, the agency could reduce efforts to police excessive contributions and other infractions, devoting itself primarily to providing information to the public. The commission's authority to audit campaigns randomly would have to be restored to ensure compliance, and sanctions for failure to disclose would have to be increased substantially. In addition, the commission should be given the power to seek emergency injunctions against spending by political actors who refuse to comply with disclosure requirements. And to move the FEC away from its frequent three-to-three partisan deadlock, the six political party commissioners (three Democrats and three Republicans) ought to be able to appoint a seventh "tie-breaker" commissioner. Presumably anyone agreeable to the other six would have a sterling reputation for independence and impartiality. Another remedy for predictable partisanship on the FEC would be a one-term limit of six years for each commissioner. Freed of the need to worry about pleasing party leaders in order to secure reappointment, FEC commissioners could vote their consciences more often and get tough with elections scofflaws in both parties.

Finally, in exchange for the FEC relinquishing much of its police powers, Congress could suspend much of its power over the FEC by establishing an appropriate budgetary level for the agency that by law would be indexed to inflation and could not be reduced. Another way of guaranteeing adequate funding for a disclosure-enhanced FEC is to establish a new tax check-off on Form 1040 that would permit each citizen to channel a few dollars of her tax money directly to the FEC, bypassing a possibly vengeful Congress's appropriations process entirely. The 1040 solicitation should carefully note that the citizen's tax burden would not be increased by his designation of a "tax gift" to the FEC, and

that the purpose of all monies collected is to inform the public about the sources of contributions received by political candidates. It is impossible to forecast the precise reaction of taxpayers to such an opportunity, of course, but our bet is that many more individuals would check the box funding the Federal Election Commission than the box channeling cash to the presidential candidates and political parties. In today's money-glutted political system, the people's choice is likely to be reliable information about the interest groups and individuals investing in officeholders.

Concluding Comments

The purpose of these reforms is to make regulation of campaign financing more rational. Attempts to outlaw private campaign contributions or to tell political actors how much they can raise and spend are simply unworkable. Within broad limits, the political marketplace is best left to its own devices, and when those limits are exceeded, violators should be punished swiftly and effectively.

Regarding the pro-incumbent bias of contributors, there is unfortunately no obvious practical solution. It is impossible to predict how a deregulated system would affect the existing heavy bias toward incumbents by contributors, both PAC and individual. In truth, there may be no way to eliminate pro-incumbent financial bias.¹ However, it is possible that expanding private resources through deregulation will actually end up helping challengers more than incumbents. A substantial body of research shows that the amount an incumbent spends is less determinative of election outcomes than the amount a challenger spends.² Simply put, challengers do not need to match incumbent spending, but need merely to reach a "floor" of financial viability. Deregulation's greatest impact could actually be in helping challengers reach this floor. If fears about the effects a free market will have on competition prove warranted, however, a modest federal subsidy in the form of discounts on mail or broadcast time—so that every non-incumbent candidate could at least reach the floor—would seem reasonable and might be acceptable even to some conservatives as long as it could be tied to deregulation.

If Deregulation Plus proves too radical, perhaps it is time to revive the sensible scheme proposed in 1990 by the U.S. Senate's Campaign Finance Reform Panel, which attempted to bridge the gap between partisans on the basic issues by suggesting many ideas, including so-called flexible spending limits.³ These are limits on overall campaign spending by each candidate, with exemptions for certain types of expenditures by political parties (such as organizational efforts), as well as small contributions from individuals who live in a candidate's own state. Since the Supreme Court has ruled that spending limits must be voluntary, incentives such as reduced postal rates and tax credits for the small individual

¹ Frank Sorauf, one of the most astute students of campaign finance, has raised the possibility that "voluntary funding of campaigns for public office is intrinsically committed to the support of incumbents and likely winners." Frank J. Sorauf, "Competition, Contributions, and Money in 1992," in James A. Thurber and Candice J. Nelson (eds.), *Campaigns And Elections American Style* (Boulder, CO: Westview Press, 1995), p. 81.

² For a cogent review of the literature, see Frank Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven, CT: Yale University Press, 1992), pp. 215–16. There is an increasing number of dissenters to this view. For instance, Christopher Kenny and Michael McBurnett argue that those who say that the level of incumbent spending has no effect neglect the interrelationship of challenger and incumbent spending in producing the outcome of the election. Incumbent spending is at least partially a function of challenger spending, that is, when challengers spend more, incumbents respond to the increased competition with greater outlays. When this interrelationship is taken into account, both challenger and incumbent spending levels affect the outcomes of the races; Kenny and McBurnett provide empirical evidence to show the effect is statistically significant. (See Kenny and McBurnett, "An Individual Level Multiequation Model of Expenditure Effects in Contested House Elections," *American Political Science Review* 88 (September 1994), pp. 699–707).

³ See "Campaign Finance Reform: A report to the Majority Leader, the Minority Leader, United States Senate, by the Campaign Reform Panel," March 6, 1990, p. 41. Co-author Sabato was one of the panel's six members, appointed by then-Senate Majority Leader George Mitchell (D-ME) and then-Senate Minority Leader Robert Dole (R-KS).

donations mentioned above should be offered. The flexible limits scheme represents a reasonable compromise between the absolute spending limits with no exceptions favored by Democrats and the opposition to any kind of limits expressed by Republicans.

Flexible limits or Deregulation Plus ought to be supplemented by free broadcast time for political parties and candidates, as well as strengthened disclosure laws that cover every dollar raised and spent for political purposes.¹ Detailed free-time proposals have been made elsewhere but ignored by a Congress fearful of alienating a powerful lobby, the National Association of Broadcasters.² Yet no innovation would do more to reduce campaign costs or help challengers than this one. Fortunately, technological advances such as "digital" television—which will multiply available "analog" TV frequencies by a factor of about six once it is available in 1997—are creating new opportunities to implement an old idea. Federal Communications Commission chairman Reed E. Hundt has recently endorsed the provision of free time for candidates and parties once digital TV comes into being, noting that free time was "not practically achievable in an analog age [but is] entirely feasible with the capacity and band width explosion of the digital era."³

In this area and others in the field of campaign finance, it is time for new thinking and creative ideas to break the old partisan deadlocks that prevent reform of an unsatisfactory system.

The CHAIRMAN. Thank you.
Mr. Alexander?

**TESTIMONY OF HERBERT E. ALEXANDER, DIRECTOR,
CITIZENS' RESEARCH FOUNDATION, PROFESSOR OF POLITICAL SCIENCE,
UNIVERSITY OF SOUTHERN CALIFORNIA, LOS ANGELES, CA**

Mr. ALEXANDER. Thank you very much, Senator. I am happy to respond to your invitation, and I want to say that my statement is my own and does not necessarily reflect the views of members of the board of trustees of the Citizens' Research Foundation.

I can also hawk a book, "Financing the 1992 Election"—

The CHAIRMAN. We do have a rule here about raising the book to television. You notice Mr. Sabato refrained.

Mr. ALEXANDER. Yes.

The CHAIRMAN. But that is all right. What is done is done. Perhaps we ought to have a moratorium on all books here henceforth.

¹ See Larry J. Sabato, *Paying for Elections: The Campaign Finance Thicket* (New York: Twentieth Century Fund-Priority Press, 1989), esp. pp. 25-42, 61-64. For example disclosure laws do not currently cover contributions to foundations that presidential candidates sometimes form. These foundations often pay for pre-campaign travel, and openly promote their candidate-creator.

² The Campaign Finance Reform Panel mentioned above endorsed the free broadcast time proposal in *ibid.*, pp. 25-42.

³ Remarks delivered at the Nieman Foundation, Harvard University, May 5, 1995, p. 7. Hundt has proposed making these new frequencies available under two government-imposed restrictions: (1) some broadcast time must be devoted to educational programming for children, and (2) free broadcast time must be given to political candidates and parties. See also Max Frankel, "Airfill", *New York Times Magazine*, June 4, 1995, p. 26; and Mary McGrory, "The Vaster Wasteland", *The Washington Post*, June 4, 1995, p. C1.

Mr. ALEXANDER. But that book backs up much of what I have to say. I agree in many respects with what Professor Sabato said, but I want to stress a couple other things.

It seems to me that the goals of election law in a democracy should be to encourage political dialogue and citizen participation, while diminishing the advantages of wealthy individuals and special interests. Many of the far-reaching reforms that have been enacted or are being proposed have sought to restrict and limit certain forms of electoral participation rather than to enlarge and expand it. Some of the reforms have become part of a politics of exclusion that should not be acceptable in a democracy.

There are a number of assumptions in the conventional wisdom on election reform on which S. 1219 is based that need to be questioned. The need is for sound policy, not policies that sound good, offer bravado solutions, but will not work or may have undesirable consequences. And so in that respect, I would like to move on to talk about political costs, because there is a great misunderstanding about the cost of politics.

In the book, we estimate \$3.2 billion is spent on all levels—Federal, State, and local—and that amount in the 1991-92 election cycle is less than was spent by Procter & Gamble and Philip Morris, the two largest corporate advertisers in the country.

It seems to me that there are no generally accepted, universally accepted criteria by which to determine when political campaign spending becomes excessive. Inflation and more stringent reporting requirements account, at least in part, for some of the apparent increase in campaign spending. Gaining the favorable attention of potential voters has grown more expensive as the nature of technology and requirements of election campaigning have changed. The amounts of money they can spend and the time they spend to raise it are due, at least in part, to laws enacted to broaden financial participation in campaigns and to limit potential influence of large donors.

Generally speaking, the larger the number of uncontested races, the lower the level of campaign spending. The higher the level of electoral competition, the more money is spent. In this sense, higher spending may be desirable.

With respect to expenditure limits, I agree with what Larry Sabato said, but I want to give just a couple illustrations.

In the Presidential campaigns that are now occurring and the ones in 1992, which are documented in this book, in all three phases of the Presidential selection process where there are spending limits, they are really meaningless or else they cause real problems for candidates if the campaigns are competitive. Senator Dole bumping against the \$37 million overall limit means that if the primaries and caucuses had been extended a little beyond in a highly competitive way, he would have had a very serious problem in spending money or else would have had

to violate the law. As it is now, there are subterfuges—the Republican National Committee taking on the payroll of some of the staff. It just doesn't make sense to have a spending limit when each Presidential selection process is idiosyncratic, when there are different conditions that may lead to intense competition, which may lead to excessive or more spending than the limits permit.

In the second phase of the process, the conventions, it is clear that the \$12 million that will be provided by public funds does not account for municipal spending in the host cities, does not account for a host city raising and spending additional money. And so the result is that in that phase of the process, much more money is spent than the spending limits permit.

Third, in the general election period, spending in parallel campaigns by labor, soft-money spending, spending independent expenditures—all of these are outside the spending limits, and yet we can't halt them, and we shouldn't try to stop them. But they make meaningless the spending limits which are on the books.

With respect to political action committees, I think that the back-up provision to PAC's, to reduce PAC contributions to \$1,000, if a prior provision to ban PAC contributions entirely is found to be unconstitutional, is disingenuous, to say the least. It conveys a lack of conviction that the prohibition would be constitutional and, thus, throws over to another branch, the judiciary, the responsibility to make the constitutional judgment. Although Congress may seek such a ban, it should face its problem of unconstitutionality itself.

PAC's, if outlawed or not permitted to contribute to candidates for the Senate or House, for example, will find other ways for spending—for example, corporations by lobbying, grassroots activities, independent expenditures, soft money—in ways that it is harder to account for in a specific Senate or House campaign. And so it seems to me that PAC's are the political arms of interest groups. Interest groups are not going to go away, and the result is, it seems to me, that PAC's should not be outlawed but, rather, PAC contributions should not be outlawed. And if the Senate wants to do something about it, you know, there are remedies that are possible outside possible unconstitutional consequences.

Bundling—I will just say one word about that. It seems to me that efforts to halt spending by EMILY's List, for example, is to punish a group that is very successful in broadening participation, and that is what the law should do. It should try to encourage the broadening of participation, not its narrowing.

Soft money is another topic that is worth considering, but the fact is that soft money permits political parties to do the things that parties ought to be able to do to participate in the system. Senator Dodd is here, the Chairman of a major party—

The CHAIRMAN. And I am going to interrupt, Senator Dodd, and I am going to have to vote. If you will just—

Senator DODD. It was a nice effort to keep me in the room.

[Laughter.]

[Recess.]

Senator MCCONNELL. [Presiding.] The hearing will resume. Others will be back momentarily.

Professor Alexander, why don't you pick up where you were?

Mr. ALEXANDER. Yes. I just want to end by making a few suggestions about change in election law. I think the limit on an individual's contributions should be increased to \$3,000, which would make the amount the same as the dollar value of a \$1,000 contribution in 1975 when that limitation went into effect. And since we have good disclosure, I have no problem with increasing PAC contributions to \$10,000 or \$15,000 per election.

I think that an exception to a complete bundling ban should be made in the case of EMILY's List or other organizations which do not lobby and where wide participation results. I don't believe in punishing organizations that are able to achieve a large contributing base.

I think there is some purpose in closing down leadership PAC's because leadership PAC's provide Members of Congress with a chance to double-dip; that is, to get two contributions in the name of one. I think there should be a revised soft-money policy that works to supply money to strengthen the political parties as a counterweight to PAC's. Stronger parties are essential, and ways are available to improve their position and their financing.

There could be a tightening of independent expenditures, although one quickly gets to a difficult line to define.

I think it is perfectly acceptable to seek to reduce broadcast and postal costs, but not in return for spending limits. There are already on the books reductions in broadcasting and postal rate reductions.

And, finally, closing a millionaire's advantage by waiving limits on contributions to opponents of wealthy candidates spending large amounts of their own money. I am from California. Senator Feinstein is not here. But she was in an arms race against a wealthy candidate, and she was held to the low limits of \$1,000 or \$5,000 for PAC's, and finally was able to raise about half as much as Huffington spent of his own money. I think that is patently unfair. There are other millionaires in politics, and I think that the contribution limits should be waived or raised considerably in cases where you have a wealthy candidate spending his or her own money in large amounts.

Thank you very much.

[The prepared statement of Mr. Alexander follows:]

PREPARED STATEMENT OF HERBERT E. ALEXANDER, DIRECTOR, CITIZENS' RESEARCH FOUNDATION, AND PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF SOUTHERN CALIFORNIA

I am happy to respond to the invitation of Senator Warner dated April 18, 1996, to testify on some considerations which bear on campaign finance reform. My statement is my own and does not necessarily reflect the views of members of the Board of Trustees of the Citizens' Research Foundation, which as an organization does not take positions on public policy.

The goals of election law in a democracy should be to encourage political dialogue and citizen participation, while diminishing the advantages of wealthy individuals and special interests. Many of the far-reaching reforms that have been enacted, however, have sought to restrict and limit certain forms of electoral participation rather than to enlarge and expand it. Some of the reforms have become part of a politics of exclusion that should not be acceptable to a democratic society.

The aims of the proponents of S. 1219 are enormously ambitious. Given budgetary and practical political considerations, certainly not all of them can be achieved. Nor should some of them, for both constitutional and pragmatic reasons. There are a number of assumptions in the conventional wisdom on election reform, on which S. 1219 is based, that need to be questioned. The need is for sound policy, not policies that sound good, offer bravado solutions, but will not work, or may have undesirable consequences.

The purposes of legislation should be to regulate the problem areas widely perceived to be crucial; to seek to keep concentrations of power in check; to use government assistance where necessary, but with the least intrusion in the process; to ease fund raising and not make it harder, as the tendency is in this bill; to permit candidates and parties to spend ample money to campaign effectively and not seek to starve candidacies or parties financially; to diminish created dependencies on PAC's and certain other financial sources by providing alternatives; to provide ample funding for the Federal Election Commission to administer and enforce the new law; to structure a system that is flexible and will not rigidify our politics; and to raise public confidence in the fairness of the system. The Senate bill falls short in some of these regards.

The premises of S. 1219 are faulty on several counts. The bill is not much different from those offered by Democrats when they controlled the Congress, including the ban on PAC contributions and the anti-bundling provision. But now there is being proposed an additional requirement that 60 percent of funding must come from within the candidate's state. Several House bills would go even further: limiting to 25 percent of funding large contributions defined as those of \$250 or more; and a new limit of \$100 on contributions by lobbyists. Taken together, these efforts are pointed in the wrong direction: further eroding the private sector financial base at a time when no alternatives such as public funding are feasible.

These, plus other "remedies" are dubious at best, raise constitutional questions, and should be revised accordingly.

Political Costs

I think it useful to give some perspective on the premise of high political costs. The critics of high campaign costs are correct about the notable growth we have experienced in campaign spending—when calculated in aggregate dollars. According to figures compiled over the years by the Citizens' Research Foundation (CRF), total spending in the 1951-52 presidential election cycle amounted to \$140 million. By 1991-92, such spending had reached \$3.2 billion.

These figures include spending not only by presidential and congressional candidates in the prenomination and general election campaigns but also spending by national and federally registered state and local political party committees; spending by nonparty political committees, such as PAC's, and their sponsors; spending on campaigns for state and local elective offices, and spending on campaigns supporting or opposing state and local ballot issues.

The total amount spent in 1991-92, however, is less than the sums that the nation's two leading commercial advertisers—Procter and Gamble and Philip Morris—spent to proclaim the quality of their products. It represents a mere fraction of 1 percent of the \$2.1 trillion spent in 1992 by Federal, State, and local governments.

However, these aggregate amounts are not meant to suggest that for any given candidates at any given level of candidacy, amounts needed to be competitive may not be high. Political money remains a scarce resource. The remedy should be to make money easier to raise, not harder, and not to continually erode the private sector financial base by adding more restrictions.

There are five points to consider in determining whether we spend too much on elective politics and whether we should attempt to reduce or otherwise further regulate campaign spending.

1. There are no universally accepted criteria by which to determine when political campaign spending becomes excessive. No one knows precisely how much is too much, but it is clear that we spend a lot more on other endeavors, many of them arguably less important to the welfare of the republic than choosing our government leaders.
2. Inflation and more stringent reporting requirements account at least in part for some of the apparent increase in campaign spending. In presidential campaigns, while aggregate amounts spent have risen from \$30 million in 1960 to \$550 million in 1992, when the value of the dollar is held constant at 1960 value, the increase is fourfold, not the eighteen fold that the aggregate amounts would seem to indicate.
3. Gaining the favorable attention of potential voters has grown more expensive as the nature, technology, and requirements of election campaigning have changed.
4. The amounts of money candidates spend and the time they spend to raise it are due at least in part to laws enacted to broaden financial participation in campaigns and to limit the potential influence of large donors. The FECA limited individual contributions to \$1,000 per federal candidate per election, prompting many candidates and committees to rely on such fund-raising techniques as direct mail solicitations, which seek large numbers of relatively small contributors. Such appeals are expensive. Raising funds from many donors forces candidates to conduct a larger number of fund-raising events for a greater number of potential donors or to spend substantial amounts of campaign time dialing for dollars. A \$1,000 contribution in 1975, when the limit was first enforced, is worth only \$325 today.
5. Generally speaking, the larger the number of uncontested races, the lower the level of campaign spending. The higher the level of electoral competition, the more money is spent. In this sense, higher spending is desirable.

It is likely that campaign spending in congressional elections will continue to increase as the number of open seats increases. And the number of open seats surely will increase, at least in the short term, as incumbents participate in a sort of self-imposed term limitation by declining to run for re-election.

Expenditure Limitations

No issue has been as controversial as spending limits. While spending limitations can be shown to be illusory, ineffective, and damaging to competition, concern about high campaign costs has led many to seek their enactment. The problem with expenditure limits is that they reduce flexibility and rigidify the campaign process while inviting less accountable ways of spending, such as independent expenditures, issue campaigns related to the candidates' positions, and soft money.

The 1992 presidential general election provides a dramatic illustration of why spending limits are ineffectual. When the campaigns are analyzed, it becomes apparent that three distinct but parallel campaigns were conducted, either by each candidate or on each candidates behalf. Only one of them operated under legally imposed spending limits.

In the first campaign, spending was limited by law to the \$55.2 million provided in public funding, money supplemented by national party coordinated expenditures of \$10.3 million. The total \$65.5 million served as the spending limit.

In the second campaign, spending was provided for, but not limited under the law, to pay the legal, accounting and related costs the organization incurred in complying with the law; by soft money; by money spent on the nominees' behalf by labor unions, trade associations and membership groups on partisan communications with their constituencies; and in parallel campaigning or nominally nonpartisan activities directed to the general public.

In the third campaign, spending also was provided for by independent expenditures made without consultation or collaboration with the candidates and their campaigns.

At the very least, the development of these three parallel campaigns underlines the futility of attempting to impose a strict system of campaign spending limits. In our political system, which is animated by a variety of competing interests, each guaranteed freedom of expression, when the flow of money is restricted at any point in the campaign process, will inexorably carve new channels through which individuals and groups can seek to influence political campaigns and elections.

For another example: The current stories about Senator Dole bumping against the \$37 million prenomination spending limit this year are well known, as well as the subterfuges to enable him to stay within the expenditure limit, by the RNC paying for staff, state parties picking up costs, and so on: Another failure of expenditure limits!

The limits on the national nominating conventions are very low, and only supplemental spending by city and state host committees makes the conventions possible. Still another meaningless limit!

Hence there is accumulating evidence in all three phases of the presidential selection process that spending limits do not work. To enforce limits on hundreds of senatorial and congressional campaigns would require the Federal Election Commission to increase its staff at a time when FEC funding is being reduced, and would only add to the futility of trying to impose meaningful spending limits. Moreover, the spending limits the current bills would impose hinge on the advantages offered for those candidates who agree to comply. The bills lay off to the broadcasters and the Postal Service the costs the Congress is unwilling to provide by appropriations or tax checkoff, the money for public financing; in any case, it is not certain that the courts would accept these as justification for the *Buckley* requirement for providing spending limits.

The key is not to limit the amount of money candidates can spend but to assure that candidates are able to make their voices heard. It makes little sense to impose draconian limits on campaign contributions and expenditures. Far better to enable candidates to raise money from widely dispersed sources, thereby increasing interest and involvement in politics in the electoral system.

Yet another undesirable effect of spending ceilings is to encourage even more "negative campaigning" at a time when opinion polls reflect increasing public cynicism toward the political process. While voters often disdain such tactics in the abstract, negative campaigns persist because they have been shown to sway voter opinion in many instances. A candidate operating under spending ceilings likely will be more inclined to "go negative," since that type of tactic is a lot more cost-effective than loftier forms of campaigning. A negative advertising barrage can quickly drive up an opponent's disapproval ratings, allowing the attacker to maximize the effect of his or her ability to use campaign cash under the limit.

To place limits on spending is to argue that campaigns cost too much. But how does one determine empirically how much is too much? And at what cost in terms of free speech? Why not take a more expansive outlook, that elections are improved by well-financed candidates able to wage competitive campaigns? Political campaign spending should be considered the tuition we pay for our education on the issues. The most costly campaigns are those in which voters choose poorly because they are ill-informed.

Political Action Committees

Now I turn to PAC's. The back-up provision to PAC's—to reduce PAC contributions to \$1,000 if a prior provision to ban PAC contributions entirely is found to be unconstitutional—is disingenuous, to say the least; it conveys a lack of conviction that the prohibition would be constitutional and thus throws over to another branch, the judiciary, the responsibility to make the constitutional judgment. Although Congress may seek such a ban, it should face its probably unconstitutional itself. Why go through such a convoluted procedure as to invite a court test of its constitutionality? What the public seems to demand these days is that politics be straightforward, not devious. Indeed, why reduce the PAC contribution limit at all? There has been so much erosion of the value of the dollar that the current \$5,000 PAC limit is worth only about \$1,600 if measured by 1975 dollars, when the limit went into effect.

Another provision of the bill is to require 60 percent of funding to come from within the state for U.S. Senators, and within the district for U.S. Representatives. Of course, such requirements of funding from within the constituency are in indirect means of excluding many political action committee contributions, mainly those from outside PAC's—say, those located in Washington, DC, or the state capitol. This represents another erosion of the funding base from the private sector; this base needs to be continued since public funding is not likely and the money is needed by candidates to campaign effectively.

PAC contributions are fully disclosed and are on the public record. They represent the political interests of interest groups that will not go away. If banned from making contributions through PAC's, corporations, unions and others will find other ways to seek influence: by lobbying, grass-roots activities, independent expenditures, and soft money, in ways that may be disclosed but less focused, and less calculable, than if given as direct contributions to candidates.

PAC's act as an institutional outreach by providing a process to gather contributions systematically through groups of like-minded persons for whom issues are a cohering element in their political activity. Candidates cannot afford to reach out by individually addressing all eligible corporate employees or union members, but PAC's of such organizations can. PAC's are solicitation systems spurring participation. PAC's are organizations whose growth was inevitable given the needs for political money compounded by low contribution limits requiring that big money be raised in smaller sums, thus facilitating delivery of both money and information about issues.

One reason for the growth of PAC's is the shift from geographical, or neighborhood, politics to socioeconomic, or interest group, politics. Corporations and labor unions, for example, are socioeconomic units replacing geographical precincts. Because the work place and the vocational specialty have come to attract the allegiance of the political active citizen, loyalties to PAC's are replacing loyalties once enjoyed by the political parties. PAC's can focus on single issues or give priority to emerging issues and still survive with small but devoted constituencies, whereas parties must be more broadly based in order to thrive.

PAC contributions play a far more limited role in campaign funding than many critics suggest. They are a negligible element in the direct financing of presidential prenomination campaigns—in 1992, they made up less than 1 percent of the prenomination campaign funds of the major candidates. Their role in congressional campaign financing is greater but far from dominant—in 1993–94, some 31.3 percent in House races, and 14.6 percent in Senate contests. Private individuals—including the candidates themselves—continue to be by far the most important source of campaign funds for congressional candidates.

Critics' claims about PAC influences on legislative voting patters are often based on hearsay or on facile correlations between PAC contributions and legislative results. But simply to posit a cause/effect relationship between interest-group contributions and legislative decisions reveals a simplistic understanding of what influences legislation. That campaign money may at times influence the voting behavior of lawmakers is undeniable. But to assign a near-monopoly of influence in the formulation of most legislation to PAC contributions ignores the rich complexity of variables that affect the process. For example, psychological

pressures affecting voting by members of Congress include many other factors—job or re-election security, party loyalty, friendships with other legislators or lobbyists, personal beliefs, prejudices, fear of ostracism, and certainly not least, state and district interests. What is most often found is stronger correlations of legislative voting to ideology, party, or constituency interests than to contributions.

PAC's tend to favor incumbents over challengers. But so do individual contributors. Even among those PAC's that generally have favored incumbents over challengers, the mere fact of incumbency is not enough to guarantee a contribution. Other factors also may affect a PAC's decision whether and how much to contribute; the candidate's party affiliation; the candidate's business or labor bias; his or her need for campaign funds; and the competitiveness of the race. Finally, PAC's keep box scores and need many winners to "prove" their effectiveness with their donors.

Competing interests, of course, may cause what James Madison called "the mischiefs of faction," but they also bring to society ideas and values of great worth. James Madison's answer was not to deny the right to associate and to organize—or by extension, to lobby or to contribute. Rather, it was to seek to ensure that no group (or collection of groups) will dominate and that all kinds of groups will be able to participate through their dollars or skills or voting members.

While it is true that PAC's give mainly to incumbents, by a factor of 4-to-1, it also is a fact that some challengers are non-starters without PAC assistance from supportive groups. There is a tradeoff here, where that 20 percent of PAC dollars that go to challengers or open seat candidates, PAC contributions are more helpful to selected challengers than the figures would suggest. We may be focusing on a couple dozen contests where PAC money can be determinative, but it is worth keeping the political process open to even these few rather than to cut off their necessary PAC support.

Bundling

Banning the "bundling" of contributions, wherein an organization solicits campaign contributions from individuals and passes them on to the candidate in bulk without reference to the bundler's contribution limit, raises questions regarding the constitutional right of like-minded individuals to associate and seek to influence the outcome of elections. But to ban bundling entirely also raises a serious question of judgment. Given the women's networking that helped to produce dramatic increases in women's representation in the Senate and House in 1992, one must wonder at values that put a seemingly water-tight system of regulation of money above the value of achieving more women or minorities in the Congress. To this observer, the attaining of a broader representation far outweighs the formulating of a strict law on bundling. Surely some exceptions are warranted.

EMILY's List has been the most successful bundler. The organization properly argues that bundling should not apply to groups such as this that do not engage in direct lobbying. EMILY's List is to be commended for attracting widespread participation—scores of thousands of relatively small contributors—and the law should provide an opening for other issue and ideological groups to emulate EMILY's List in the future. It is ironic that an organization that has successfully broadened its financial base should be punished.

Soft Money

The criticism of soft money should not obscure the important uses to which soft money is put. Soft money was not devised as a loophole in the law; rather it is the result of a conscious effort by Congress to empower State and local party committees in federal campaigns and to encourage voluntary citizen participation. Candidates run on party tickets and parties have a legitimate role to play in their election; soft money makes it possible for them to fulfill that role. Citizen participation in election campaigns should be highly valued in a democracy; soft money makes the ideal of voluntary participation in presidential and other campaigns a reality.

Critics may be rightly concerned about some of the sources of soft money and about the large amounts often contributed by individual and interest groups. Until Congress, however, makes available other sources of funds to serve the important purposes soft money now fulfills, prohibiting its use may simply force candidates to rely once again on media advertising and national campaign organization activity to the detriment of voluntary, grass-roots campaigning.

The many ways that have been found to use soft money to pay for campaign-related activity underlines the futility of attempting to impose a strict system of limitations on campaign financing in a democratic, pluralistic society.

Conclusions

Election reform is not neutral. It works to change institutions and processes, sometimes in unforeseen ways. There is a sense of irony, that no matter how well intended election laws are, the consequences are sometimes contrary.

These concerns should not prevent attempts to improve the system. Unwanted outcomes are not a reason to retain the status quo. But they are a reason to weigh the possible consequences of change as carefully as possible. And reform is possible without challenging the courts to find sections of the law unconstitutional; it is unbecoming for the Congress to legislate in that way. It is not desirable to compromise basic constitutional rights of voters, candidates, special interests, and other participants in the political arena, in order to achieve some "ideal" system that is watertight, because it leads to rigidity in the political arena that should remain flexible, to accommodate new candidacies, new ideas, and on occasion, new parties.

I suggest an alternative not requiring federal funding, that is, a bill stripped of all budgetary considerations. Meaningful incremental reform would include:

- the limit on an individual's contributions should be increased to \$3,000, and PAC contributions to \$10,000 or \$15,000. These actions would make needed funding available to underfinanced campaigns and at the same time would respect the values of diversity and participation in our political system. Further, these actions would increase the individual contribution component of total political receipts and correspondingly decrease the PAC component.
- an exception to a complete bundling ban where wide participation results;
- the closing down of leadership PAC's
- a revised soft money policy that works to supply money to strengthen the political parties as a counterweight to PAC's. Stronger parties are essential, and ways are available to improve their position and their financing.
- a tightening of independent expenditures
- reducing broadcast and postal costs but not in return for spending limits
- closing a millionaire's advantage by waiving limits on contributions to opponents of wealthy candidates spending large amounts of their own money.

This would be a package bringing significant change and would be well worth pursuing. There are minimalist and maximalist positions regarding election reform, and perhaps discussion based on the lowest common denominator of agreement could lead to widening circles of issue acceptance. The maximalist positions represented by S. 1219 do so much to reinforce incumbency advantage that runs counter to the prevalent and anti-incumbency feeling in the country, that dialogue in the context of some of the criticisms and ideas offered here would be a great movement forward in understanding reform and reality regarding issues and abuses of money in politics.

Senator MCCONNELL. Thank you, Professor.
Mr. Ornstein?

TESTIMONY OF NORMAN J. ORNSTEIN, RESIDENT
SCHOLAR, AMERICAN ENTERPRISE INSTITUTE FOR
PUBLIC POLICY RESEARCH, WASHINGTON, DC

Mr. ORNSTEIN. Thanks, Senator McConnell.

Unlike my colleagues, I do not have a book with me to hold up and hawk, despite the fact, as my friend Al Franken says, that we are on C-SPAN and literally hundreds of people are watching.

[Laughter.]

Mr. ORNSTEIN. But I do have some ideas which I am hoping to share with you, and I am delighted to have the opportunity to do so as a part of this informative and interesting set of hearings—not the first that we have held here and not the first in which we have had a dialogue. It is *deja-vu* all over again, Mitch.

I have taken the charge seriously of trying to focus on positive things that we can do, and that means, I believe, doing a couple of things. It means, first of all, establishing what the first principle is that we want to operate under, and that in turn means demolishing the hoary and misguided principle that has basically undergirded every campaign finance reform that we have enacted in the last 25 years, and basically throughout the course of American history, and establishing a new and different kind of principle, looking at what objectives we want to fulfill with campaign finance reform and then trying to think through what we might do that would help us achieve those objectives without having unintended consequences that make the system worse and not better. And I believe there are things that ought to be done. The only thing worse than doing nothing at this point, however, is doing something that will simply exacerbate the situation.

I do want to offer some warm words for Senators McCain and Feingold for stepping forward and trying to move this process forward and trying to break the partisan division and tension that we have had for a very long period of time. They have worked very hard at trying to find some common ground, and they have some good ideas here, although I think they focus way too much on that same hoary principle. And that same hoary and misguided principle, of course, is that we need to eliminate as much money as we possibly can from the current campaign system.

I would start with a different principle to replace that mantra, and that starts with the premise that the problem in campaigns is not too much money. We have very successfully over several decades driven a great deal of money out of the system. We have tough limits on what individuals can give, unadjusted for inflation for two decades; bans on corporate giving; strict limits on organizationally related contributions through political

action committees, which, of course, was one of the key reforms of the past. And it is obvious that these things haven't worked as intended. They have not rooted out corruption or ended incumbent advantages or leveled the playing field or reduced candidates' obsession with raising money, or broadened the field of candidates that we want to consider running for office. And, of course, the people who designed the very reforms under which the system operates are now the ones screaming loudest for replacing them with new reforms.

Now, why haven't they worked? I would suggest it is very simple, and it is a supply and demand issue. Reducing the supply of money doesn't reduce the demand for money. And unless you reduce the demand or address the demand for money, you have a recipe for disaster. The demand for money is not simply a corrupt thing. We live in a large, diverse, and cacophonous society where effective communication is going to cost a lot, of any sort, including the sorts of commercial communication Procter & Gamble and the others that Herb Alexander has suggested.

Why do candidates turn to PAC's, raise their funds out of State, run countless fund-raisers, spend hundreds or thousands of hours on the phone dunning contributors? Because the demand for resources is high and growing, and the supply is limited and shrinking. And if the central thrust of any reform that we move forward is to ban PAC's, cap spending, and require that 50 percent or 60 percent or more of money be raised in-State, then it will end up making matters worse, not better.

Temptations to corruption will be much greater. We are going to have candidates hitting up business and labor officials and their families individually one by one, replacing PAC's, and that will mean disclosure is going to become much less effective. It will be much harder to figure out where that money is coming from. We are going to have laundering of out-of-State funds into a State. We are going to find in-kind ways to spread the message without directly spending money. And then we have all of the other problems of spending limits, giving more leverage to multimillionaires and to marquee figures like news anchors as candidates.

Now, I would start instead with a different set of positive goals, and let me just quickly run through a few. I think we need new sources of funds, as far from interested money as we can get, available to challengers and incumbents alike so that they can get effective messages across to voters. And that is what a campaign should be about, is getting messages across to voters in a kind of dialogue, as a part of a deliberative process.

I want to find a system that can broaden the pool of possible candidates, removing money as the key barrier to entry. We have got lots of other barriers to entry that we are going to have to work on, the fact that people who have spent their lifetimes building reputations if they run for office now run the risk of

having them shredded before their very eyes, often for reasons that are not very good. But money is a major barrier, and we need to find a way to enable candidates, challengers and others, to raise the resources necessary to make their case.

I want to preserve a market system, as much as we possibly can, consistent with those other principles. In every case, candidates should compete for funds and compete for breadth of support.

I want to have the largest base of voters involved in effective campaigns through small contributions to candidates of their choice.

It has been interesting in my office, as has been true, I am sure, all across the country. Everybody has an NCAA pool, the office pool. And what you find is people put \$1 into a pool who have no interest whatsoever in basketball, and all of a sudden they are following basketball. They have a stake in the process.

If you have candidates getting money from small individual contributors, the more you have, the more people are going to feel a stake in the political process. And we have a process now that has basically found all kinds of ways to discourage small contributors, and we have seen, of course, a sharp decline, particularly since the 1986 tax reform. And, to repeat, I want a system in campaign finance that enhances dialogue, debate, and deliberation, which should be the hallmarks of healthy campaigns.

Now, I ask myself and I ask you all to ask yourselves, Will spending limits, eliminating PAC's, forcing candidates to raise the money in-State—even if it is accompanied by a corresponding direct grant of television time—accomplish any of those goals? And I say the answer is no.

Now, does that mean we scrap things like McCain-Feingold? I would suggest that we may be able to devise a new bill, but it may also be possible to change it in ways that can make it happen, and let me throw out some ideas, some of which I have raised here before, others of which I haven't.

I emphasize first—and I believe it is an essential building block to anything that we do, and following on what Larry Sabato said as well—tax credits for small individual contributions. They worked before, and there was a modest and limited tax credit, a 50 percent tax credit. I would like to see a 100 percent tax credit for a small individual contribution. We will see, if we have it, \$100, \$200, whatever we can afford, we will see those kinds of contributions go up and candidates will focus more on raising that kind of money and less time trawling for the other kinds of money that we would like to see less of. I don't think you have to cut other kinds of money. If we are going to level the playing field, we ought to add more dirt rather than cut it away.

Now, that is not giving anybody something entirely free. If I am going to give Senator McConnell a \$100 contribution and

there is a tax credit, I am still going to have to write out a check for \$100. It is going to be deducted from my account, and I am not going to see it back except indirectly, months later, at the time of the tax return. But it makes it much easier to break the ice for a candidate and for an individual to consider it.

We could pay for that in part, I believe, by putting a tax on political action committees. I wouldn't reduce their limits, but it seems to me a modest tax, they make a contribution to a candidate, they also put an additional contribution into a fund to help pay for this, and we could undercut the notion that a tax credit is a public subsidy.

Added to this, and I believe it is now possible and doable—the time is absolutely right, and it would work very well—is to have broadcast incentives that are tied to these small individual contributions. We are now in the Congress in the process of debating what we will do with the digital spectrum. Many people support auctioning off the digital spectrum. I will be an agnostic on whether we auction it, give it away, or find some other formula. But in any case, we can attach conditions to what is going to be an extraordinarily lucrative opening with a lot more channels of communication available to those who will have that availability. And what I would suggest is that the condition for moving to the digital spectrum is to provide a significant number of minutes for political communication, but that those not be given to candidates.

You can move with free time for Presidential candidates for networks. You might even be able to work something out in the Senate. It is undoable, unworkable, infeasible in the House, and I have questions about the Senate as well. I would much rather see it work in the following fashion:

Once a candidate gets over the threshold of raising a certain amount of money from small individual contributions, say \$25,000 in contributions of \$100 or less, then for every such contribution, the candidate would get a matching grant in the form of a voucher for broadcast time, which could be used as legal tender with those broadcast stations for, of course, the lowest cost, non-reimbursable time.

That means that candidates now have an enormous incentive to go out and raise the kind of money that all of us would see as beneficial and desirable in this process. It becomes a competitive process, and it is a way of tilting significantly away from the self-financed multimillionaire candidate, none of whom have the opportunity to raise this kind of money in the same fashion that others would.

I would add to this some other ways of increasing the supply of resources. I would suggest, as my colleague Tom Mann did before the committee a few weeks ago, that we have a frank, expanded, not contracted, as we have been doing, for incumbents and for challengers with a particular twist: that we ought to have during a campaign, an election year, in a general

election campaign, challenger and incumbent each being given the opportunity to send a message, a communication to all the voters in a district or a State, but with the proviso, maybe two, maybe four, that those communications be bundled together, so that what a voter gets is something from the incumbent and something from the challenger.

When I get communications, frank mail, from my representatives, I don't look at them very much. But if something came in with a communication from both, it is going to shape what is in those communications, and I am going to be much more likely to look at it. And it makes for a dialogue while also creating more of a level playing field and expanding communication in the process.

And, finally, let me suggest something that I proposed a number of years ago and Majority Leader Dole actually introduced as an amendment the last time we brought campaign finance reform up on the floor of the Senate, and that is a seed money mechanism to get potential challengers started and that would also be available to all candidates. Early in the campaign cycle, allow candidates to get up to \$100,000 in contributions of up to \$10,000. At the same time, of course, I would raise the individual limit and index it. It is now worth about \$250 based on the value when the limit was imposed two decades ago. But this would be something in addition. Give a candidate or a potential candidate an opportunity to get going, to test the waters, to see whether or not a campaign is feasible.

If you have those larger contributions disclosed immediately to the news media as well as to the FEC, I as a voter can look out there, and if I see that Larry Sabato has given \$10,000 to Mitch McConnell to get a campaign underway, and I think that is wrong, I have the opportunity at the voting booth to make my judgment. I don't think there is anything wrong with this, and, indeed, for all candidates, including incumbents, it gives them a nice little chunk at an early stage of a campaign—I wouldn't do it later because then somebody could sandbag another candidate with it—to get over the hump right at the beginning.

Implement some or all of these ideas, and we have expanded the supply and helped to accommodate what is a legitimate demand.

Let me just add one other suggestion, and that is, if we find we can't move something along now, or even within the foreseeable future, I would consider at least the option of a commission, but not the kind of commission which my colleagues served a few years back. I am beginning, frankly, more generally to worry about how we are going to govern down the road when we have more and more Members of the House and Senate who are, in effect, around the 10-yard lines of the political process, or many behind the goalposts, and many fewer who are somewhere near the center between the 40's, as we used to have. And I am beginning to think that on rare occasions a

kind of base-closing commission formula where you have a deliberative process—a group of people meet, come up with a recommendation, bring it to the Congress, you have an opportunity to go over it and poke holes in it, and then they go back and revise to take those comments and suggestions and analysis into account, and then bring it back for a guaranteed up or down vote—may be the way in which we go. It may be the way in which we have to go on Social Security or on Medicare. And it ought to be something we also consider if we find we can't break a logjam at all here after a decade and more of discussion on campaign finance reform.

Thanks very much.

[The prepared statement of Mr. Ornstein follows:]

PREPARED STATEMENT OF NORMAN J. ORNSTEIN, RESIDENT SCHOLAR,
AMERICAN ENTERPRISE INSTITUTE, WASHINGTON, DC

Thank you for the opportunity to testify before this committee today, and thank you for the series of very informative and interesting hearings on campaign finance reform which you have been holding over the past few months, of which this is a part.

The need to assess the basic way we look at campaigns and possible reforms is strong, since the issue has become a larger one on the public agenda, and since a major bill has emerged with bipartisan support. It is good news that such a bill has emerged and has broken the rigid partisan division that existed for so long. But that good news must not prevent us from looking at it and other alternatives in a deep and skeptical way. The only thing worse than doing nothing at all on campaign finance reform, in my opinion is doing the wrong thing—repeating history, going for the kind of “reform” that will only make the problem worse, leading to more obsession by candidates with raising money, more advantages for the independently wealthy, more suspicion of corruption, more barriers for good candidates to run, and even more cynicism and discouragement on the part of voters.

I want to start with several words of praise for Senators McCain and Feingold. It was not easy for them individually or collectively to find common ground and to build support for their effort. After years of partisan spitting matches over campaign finance ideas, their bipartisan approach is refreshing, and both McCain and Feingold, who have stuck their necks out to push reform, at the expense of some catcalls from nabobs in their respective parties, deserve major kudos for their effort. But while I applaud them, I have some misgivings about the substance of their approach. Despite a number of positive features, including a laudable attempt to expand the availability of broadcast time to candidates, the McCain/Feingold bill relies way too much on the same hoary and misguided principle that has driven campaign finance laws and reformers for decades— we need to eliminate as much money as we possibly can from the current campaign system.

It is time to rethink that principle. There is a different way of looking at campaigns; take it, and fresh ideas that flow from it—ideas that are not just theoretical, but have been talked about by key political actors from Reed Hundt, Chairman of the Federal Communications Commission to Senate Majority Leader Bob Dole.

Rethinking basic principles starts with the following key premise: *the problem in campaigns is not too much money.*

The mantra has been precisely the opposite through the several incarnations of campaign finance reform that have created the current horrific system, driven by generations of reformers revulsed by the wheeling and dealing of politics and special interests, believing that politics is evil, that money drives politics—and that it is the root of all evil.

In large measure, they have accomplished their goal. We have tough limits on what individuals can give to campaigns, unadjusted for inflation for two decades; bans on corporate giving; and strict limits on organizationally-related contributions through political action committees (one of the key "reforms" of the past). Obviously, these reforms have not worked as intended, rooting out corruption, ending incumbent advantages, leveling the playing field and reducing candidates' obsession with raising money. The people who designed them are among those screaming the loudest for new reforms to replace them.

Why haven't they worked? The answer is simple. Reducing the *supply* of money without reducing or addressing the *demand* for money is a recipe for disaster. In a large, diverse and cacophonous society where the costs of effective communication are rising rapidly, campaigns will require a lot of money. Why do candidates turn to PAC's, raise funds out of state, run countless fund-raisers, spend hundreds of hours on the phone dunning contributors? Because the demand for resources is high and growing, while the supply is limited and shrinking.

If the central thrust of the latest campaign reform is to ban PAC's, cap spending and require that 50 percent or more of the money spent be raised in-state—key planks of McCain/Feingold—it will end up making matters worse, not better. Temptations to corruption will be much greater—hitting up business and labor officials and their families one by one to replace PAC contributions (in a fashion much less amenable to disclosure), laundering out-of-state funds into the state, finding "in-kind" ways to spread the message without directly spending money. And, of course, sharp new limits on funds will give even more leverage to the multimillionaires and to marquee figures like news anchors as candidates.

Instead, we need a new approach based on a different mind set. Most campaign finance reform focuses on the ills of the system, devising formulas to erase them—which end up backfiring via unintended consequences. *Effective campaign finance reform should start with positive goals.* Here are five:

- Effective campaign reform means finding new sources of funds, untainted by their ties to "special interests," that will be available to challengers and incumbents alike to get effective messages across to voters.
- The campaign finance system should broaden the pool of possible candidates, by removing money as the key "barrier to entry," and enabling challengers an opportunity to raise the resources necessary to make their case to voters.
- The campaign finance structure should preserve as much of the market system as possible; candidates should compete for funds and compete for breadth of support, using their backgrounds, personal characteristics and ideas as: products" to attract voters; there should be some rough parallel to antitrust rules, creating a competitive marketplace; and there should be no direct subsidies.
- The campaign finance system should encourage the largest possible base of voters to be involved in election campaigns, through small contributions to candidates of their choice.
- The campaign finance system should encourage more dialogue, debate and deliberation as the hallmarks of healthy campaigns.

Ask yourself: will spending limits, elimination of PAC's, and forcing candidates to raise 60 percent of their funds in-state, even if accompanied by direct grants of television time, accomplish any of these goals? The answer is no. Can McCain/Feingold be changed to incorporate reforms that would work in a positive way, or can a new alternative be devised? Here are some ideas for doing so:

1. **Tax credits for small individual contributions.** Before the 1968 tax reform act, the tax code allowed a 50 percent credit for a federal campaign contribution of up to \$100. For the past 9 years, there has been none—and small individual contributions, the kind no one can argue are "interested money"—have steadily declined. Put in a 100 percent tax credit for a \$100 contribution, and we will see small individual contributions go up, and candidates spend more of their time seeking them, and less of their time trolling for PAC money.

Voters will still have to write the check and have their accounts debited, getting their money back only indirectly the next April, and candidates will have to

compete in the marketplace for contributions, but the incentive system will change enough to provide a major boost to the kind of money we want more of in campaigns.

2. **Don't tax PAC's—tax PAC's.** Banning political action committees is certainly unconstitutional and probably unwise. Providing major new incentives for candidates to raise other kinds of money is a better way of dealing with the problem. Another way to alter the playing field is to tax PAC's, say requiring them to pay 50 cents for every dollar they contribute to a candidate. That money could in turn be used to defray the costs of the tax credits for small contributions, to undercut the argument that a tax credit is still a public subsidy.

3. **Broadcast incentives tied to small individual contributions.** The impending "digital revolution" in broadcasting provides an unmatched opportunity to free up resources to candidates without resorting to direct grants of air time. Within the next few years, there will be six digital channels available for every existing analog television channel. As these new channels, a dramatic expansion of the public airwaves, are distributed to broadcasters, providing a huge financial boon, it will be possible to secure public interest commitments in return—namely, commitments to provide broadcast time, radio and television, to candidates for Congress.

But to make a better campaign finance system, the commitments of time should be distributed in the following way: *Once a congressional candidate has raised \$25,000 in in-state contributions of \$100 or less, any such contribution will receive a matching voucher that can be used for radio or television time.*

Here is a golden way to accomplish several goals at once. This reform undercuts the enormous edge of the independently wealthy candidates—the Michael Huffingtons—who would not be able to raise large sums from small individual contributors, and would not qualify for the additional broadcast time. It also dilutes the inherent advantages of incumbents, who have no intrinsic edge in raising small individual contributions, as they do with other funding sources like PAC contributions. Make this change, and candidates of all stripes would have huge new incentives to raise money from average voters in their states, without being coerced to do so, and in the process would sharply expand the pool of voters with a stake in the campaign. And the dialogue of the campaign would be enhanced by providing more outlets for communications from the candidates.

4. **A frank for challengers—with a special twist.** Want to equalize the playing field between challengers and incumbents while also enhancing the dialogue of the campaign? Instead of eliminating the frank, the free, district-wide mailing allowed members of Congress, *expand* it to challengers, but with this twist. During election season, each incumbent and challenger would be given an opportunity to send out two district-wide mailings, *but with the proviso that the messages would be bundled together* (the two mailings would alternate which message came first.) Voters would thus get a communication from *both* candidates, allowing them to compare and contrast, in a kind of package that more voters would likely to read, and done in a way that would be likely to read, and done in a way that would enhance dialogue and deliberation.

5. **A "seed money" mechanism to get potential challengers started.** Right now, the limit on individual contributions to campaigns is \$1,000 (or about \$250, based on its real value when the limit was imposed more than 2 years ago). We should raise that limit to account for inflation. But we should do more. What if campaigns were allowed at early stages to raise up to \$100,000 in individual contributions of up to \$10,000? Such contributions would have to be promptly disclosed, to both election officials and the media, allowing voters to judge whether the candidates were being "bought" by a handful of wealthy contributors. At the same time, candidates who want to test the waters or simply get over the hump to run a respectable campaign, could do so if they could find ten well-to-do individuals willing to give them a chance.

This is a list of the kinds of ideas that should command bipartisan support, and could build a better, more effective, cleaner and fairer campaign finance system without continuing the pathologies that have made past reforms destructive rather than constructive in their impact. There is a better way, based on enhanc-

ing, not curtailing, the resources available to candidates to communicate with voters.

I have one final suggestion. It may not be possible to move campaign finance reform through the legislative process in a traditional way. That is one reason why both Speaker Gingrich and President Clinton endorsed the idea of a commission on campaign finance reform. Frankly, I think an old-style commission won't work. We've tried that—in fact, Bob Dole, in his previous turn as Majority Leader, set up a commission which emerged with some laudable ideas, only to see them disappear into the ether.

I suggest a different kind of commission, one fitting Dick Arme's base-closing model. Create a commission with a mix of members of Congress and outside experts. Give it a short period of time to issue recommendations. Give Congress several weeks to hold hearings on their recommendations, and to let the academic, press and political communities examine and comment on them. Then give the commission some additional time to absorb the comments and criticism and revise its recommendations if the members see fit. And then have a guaranteed, fast-tracked, up-or-down vote on the package. I would rather see campaign finance reform—prudent, careful reform based on sound assumptions—emerge through the normal legislative process. If that proves impossible, this kind of commission can make it happen.

Senator MCCONNELL. Let me just lead off by picking up on your last suggestion. Are you thinking that because of the gridlock, which the founding fathers wrote into the system, that we should consider not only throwing this issue to a base closing commission, but maybe Social Security; how about Medicare, legal reform? Should we just sort of delegate all of these things out to some group to make our decision for us and then send it back to us on an expedited procedure basis?

Mr. ORNSTEIN. I knew you would be enthusiastic about this one, Senator McConnell.

[Laughter.]

Senator MCCONNELL. I just wondered how far you want to take this, because there are a lot of issues that we are quite divided on. And as you certainly know, because you are much more of a scholar than I, the founding fathers anticipated that and actually preferred it, and built a system in which you have to develop consensus or you do not get legislative action.

And so I am wondering if you concluded that the mechanisms of the Constitution no longer serve us well here, and that we should routinely, on tough issues, throw them to an outside commission.

Mr. ORNSTEIN. No. And, you know, as you know from other occasions in which I have testified in front of this committee, I am against all constitutional amendments. I want to preserve the system. I am growing a little worried about some issues in which we have a repeated—some issues which are of enormous national significance and where partisan division and other kinds of difficulties make it nearly impossible to act, and where the national interest—

Senator MCCONNELL. You are not suggesting that this is one of those enormous public issues are you?

Mr. ORNSTEIN. I am beginning to worry that we are reaching the point that we ought to be doing something, and we are not.

Senator MCCONNELL. Well, the public certainly does not think so. I assume you are familiar with the Tarrance poll taken last month, which is rather interesting, about how—

Mr. ORNSTEIN. Polls on campaign finance reform are as much of a growth industry as our work is.

Senator MCCONNELL. Yes, but I do think it is interesting to note that they asked 1,000 people what they thought was the most important issue confronting the country, and one mentioned this. It is a rather interesting survey. I would call it to your attention, in terms of the public's view about whether or not this is a major issue that ought to be dealt with.

Let me just say that we agree on a lot of things, all of us. So I want to focus on the things that ought to be done to improve the system. Frankly, I do not think that is going to happen in this Congress, because the proposal that is before us is basically the same Democratic proposal we have had for 10 years. But focusing on things that could improve the system, I gather all three of you agree, I think I heard you say, that you do not think we have too little money in this process. We probably do not have enough.

Mr. ORNSTEIN. Yes.

Senator MCCONNELL. Would not the Supreme Court's ruling in favor of Colorado in the big case that is winding up for decision, solve one of our biggest problems, which is that the law 22 years ago put restraints on the parties, of all things, a most absurd suggestion that party spending on behalf of candidates ought to be constrained.

If the Supreme Court rules that that is no longer appropriate and that parties can indeed advocate whomever they choose in whatever amounts they choose, would that not be a significant step in the right direction, to at least free up the two entities in America that are not—they do not vote on any legislation, so it is pretty hard to influence them to support one thing or another. They support candidates who wear the party label.

I am curious from each of you whether you think, if such a decision were reached, that would be a major step in the right direction? Professor Alexander?

Mr. ALEXANDER. Senator, I have always favored strengthening the political parties. And I do believe that if the Supreme Court finds in favor of the Colorado Republican Party, that will blow something of a hole into the structure of campaign finance regulation, but on the other hand, will create new opportunities for money to go to parties, to enable parties to do the things that they legitimately ought to do on behalf of candidates on their own ticket.

I have only one caveat with respect to that, and that is the feeling that there may not be adequate disclosure of some of the State-level party activities, unless provision is made to ensure that there is adequate disclosure, maybe at the Federal level, but

certainly at the State level, of those activities in which the political parties should rightfully be able to participate.

Senator MCCONNELL. So what I hear you saying is if it were possible to have full disclosure, this would be a step in the right direction?

Mr. ALEXANDER. Yes.

Senator MCCONNELL. Professor Sabato?

Mr. SABATO. I also agree that we have got to make sure the disclosure is there. But I am hoping that the court rules in favor of the Colorado party. As you may know, I have joined with a group of political scientists in submitting an amicus brief on that side of the case. So I am hopeful, given the comments during oral argument that members of the court made—sometimes that is deceptive. But given the comments they made, I think it is likely they will rule in that direction.

Senator MCCONNELL. Professor Ornstein?

Mr. ORNSTEIN. I do not see it as a panacea, Senator McConnell. I have always been skeptical of proposals to ban soft money, because they strike a serious blow at parties. And I think all of us would like to see stronger parties. This is not going to solve our problems. It is not going to broaden the base of candidates who are willing to get into it.

Senator MCCONNELL. If I could interrupt, it would allow parties to compete with, say, unions. It would give parties, which are in business exclusively to elect candidates, a chance to compete with the various other interests out there who have constitutionally-protected rights to express themselves in unlimited amounts; would it not?

Mr. ORNSTEIN. Well, if the court ruled in that way, then presumably it would give them the right to express—I would assume that what the court would do is probably to leave it up to the States to regulate, it would be my guess, however they wished. Maybe it would open things up to parties to do anything they wanted, but we will see.

Even if it leveled that playing field—

Senator MCCONNELL. You are assuming, then, a kind of narrow ruling, as opposed to a broader one?

Mr. ORNSTEIN. Yes, I believe we will probably see a narrower ruling, rather than a broader ruling, in this case. But even if we saw a broader ruling and you did have parties out there doing what they wanted and competing with unions in that regard, and we might agree that that is a positive thing, it is not going to solve all of our problems. It is not going to get us the wider range of candidates. It is not going to necessarily enhance the kind of dialogue and deliberation we want in a campaign. It is not going to bring a broader group of contributors necessarily into the process with a stake in it.

And all of those things, I view as desirable enough that I would not sit back if the court rules in that favor and say, "All

right. Now, that is a problem taken care of. Let's move onto something else."

Senator MCCONNELL. With regard to the broadcast vouchers, I know, Larry, you have been pushing that for a long time. And I have sometimes been receptive to it and sometimes not. But I think one thing is clear, that if we were to go down that path, we would not politically be able to limit it to Federal races. So, we would be bombarded by candidates for sheriff and the legislature and everything else, saying "Why should it be cheaper to run for Congress than it is for sheriff?"

So we are talking here about a path, if we choose to take it, that will call upon the broadcast industry to subsidize all political races in America. I am not quite sure what the cost of that would be to that industry, but it is something, as you can imagine, they are not enthusiastic about.

It is one thing for them to voluntarily, as they are apparently going to do this year, give away some time for one big race every 4 years. It is going to be quite another for us to legislatively call upon them to, in effect, subsidize all races every year. And I am curious as to how you see this play out, and whether or not you think it would be desirable anyway, to say, "Look, no matter what the size of your station, this is your obligation as a condition for your license?"

Mr. SABATO. Senator, that is a major problem with free time. And for that reason, I have always proposed that the time be granted, not to candidates, but to national and State parties. Give them the responsibility of allocating the limited time that stations can reasonably offer to candidates. And any rational party, which will eliminate about half of them, will give the time to the most endangered incumbents and the most promising challengers.

So I think that solves the problem. You are absolutely right. In a large media market, in a New York market, if you start opening up free time to candidates below the Presidential level, pretty soon the stations will be inundated. They will not have any commercial time to sell. And I am sympathetic to that. But I think giving the time to the parties and putting the burden on the parties to make the choices is the right way to go. It strengthens party and it also solves the problem for the individual stations.

Mr. ORNSTEIN. Senator, let me—I would just say I am against free time, other than at the Presidential level. I am a strong supporter of Paul Taylor's proposal at the Presidential level as it was suggested, where you have the same time every night over a concentrated period of time, alternating candidates, because it brings you a dialogue. It does bring you a conversation. And just giving them some time at different points during the broadcast day so that they can speak directly to voters is nice, but it does not do what you would like to see done in this kind of a campaign.

I am against time given to candidates or parties below the Presidential level because I think it opens a rat's nest of unintended consequences. That is why I believe—I think we have an opportunity here with the digital spectrum where, in effect, you are not really putting the arm on anybody. You are either giving them something that is extraordinarily valuable and putting small conditions in place or you are, in effect, adjusting the price that people will pay at an auction, knowing that the number of minutes is going to be somewhat less than they would otherwise have. It is not going to be a huge amount.

But if you do it in a way that still keeps it a competitive process in the marketplace, where candidates have to demonstrate a breadth of support with a broad mass of voters before they get such time, then you are going to have that allocated in a way that I think fits our particular political process. And it is not necessarily television time, by the way, it is also, I think, radio time. That is a much, much better way to go than trying to get some kind of a mechanism.

And we know—you know, just take an example of, what, are you going to give the Virginia State party the opportunity to allocate time in the Senate race? I mean, I think you create a kind of dynamic that is deeply destructive, and I would much rather avoid that entirely.

Mr. SABATO. Not in the primaries, not in the primaries, only general.

Senator MCCONNELL. Herb, do you have any observations?

Mr. ALEXANDER. Senator, the problem is that the audience range of the stations is not congruent with the political jurisdictions. And the result is that, for example, in the New York media market, there is the inclusion of Connecticut and part of New Jersey, as well as part of New York. There are 40 congressional districts within that audience range. And the problem is how that time should be allocated to serve the populations of all those three States.

And the same problem is apparent across the country. Northern Indiana, for example, candidates buy time on Chicago stations, Delaware, where either Philadelphia or Baltimore stations, where time may be bought. Kentucky, your State, some candidates in the northern part of Kentucky use Cincinnati stations. And so the problem with providing free time in those circumstances seems to me to be rather great, because so much of the audience range is outside the political jurisdiction of the candidate to whom the time would be given.

But in principle, I do not have any problem if broadcasters willingly do provide more time than they do at present. And I also do not have any problem with Larry's suggestion of the political parties allocating the time. Why cannot the chairman of the Democratic parties in Connecticut, New York and New Jersey get together and decide who is going to get the time?

Senator MCCONNELL. One final question. Having taught part-time, written, lectured, debated this issue now for two decades, not as much as you three, but quite a bit, it seems to me that it is absolutely clear that the real disgrace is the Presidential system. And we are seeing it unfold again this year in a way that discriminates mightily against the candidate who is not in the White House.

This particular year, it hurts my side. Other years, it has hurt the Democratic side. I am curious if you share my view that the Presidential system, with its micro-managed spending limits in each State, its five-year audit procedure, its unfairness to the party out of power, why do you think that the press continues to agitate for a change in the congressional system, which has been almost totally scandal-free for 20 years, and pays almost no attention, almost no attention, to this every-four-years disaster that we see unfold, called the Presidential system?

Mr. ALEXANDER. Senator, I may have received 20 or 30 phone calls from media at the time that it appeared that Senator Dole was going to bump the \$37 million limit. And not one of them, after talking to them and suggesting that the problem is the spending limit, not one of them wrote that it is time for a reexamination of the spending limit.

Senator MCCONNELL. Right.

Mr. ALEXANDER. And yet, you know, even commentators are not talking about a reexamination of the spending limit. That is why, in my testimony, I suggested that in the Presidential pre-nomination, it is a problem, not just with State-by-State limits, but the overall limit if the campaigns are going to be very competitive, as they were in the first few weeks of the Presidential selection process this time. And also the 20 percent overage for fund-raising cost.

Senator Dole was also approaching 20 percent on his fund-raising cost. And so there are actually three limits that apply in that case, the overall limit, the State-by-State limit and the overage fund-raising limit. And they all should have been blasted and could have been blasted if Senator Dole had the freedom. He is able to raise more money, but he cannot spend it. And I think that that is unfair to him, but I think it is also a subterfuge to say his staff can go on the payroll of the Republican National Committee or Governors in the States can invite the candidate to come at their cost. Why cannot we be truthful about this?

In the conventions, you know again, the spending limits are meaningless. And in the general election, when you add in the independent expenditures, the soft money, parallel spending by labor, compliance costs, the costs are not what they were 4 years ago, \$65 million, if you include the coordinated expenditures by the national committee. They were in excess of \$100 million by or on behalf of the Presidential candidates in the general election.

And so who are we kidding when we say that there can be effective spending limits? Now, you take that limitation system to the Senate and to the House, it means an overload for the Federal Election Commission. You would have to appropriate, you know, a lot more money.

Senator MCCONNELL. I also say the FEC—

Mr. ALEXANDER. If they could handle it at all.

Senator MCCONNELL. If you would yield, I often say the FEC would clearly have to be as big as the Veterans Administration.

[Laughter.]

Senator MCCONNELL. You know, trying to audit everybody's speech for 535 additional races.

Mr. ALEXANDER. And just one other point, and that is I think that spending limits would lead to more negative campaigning, for the reason that the candidates with their fewer dollars would want to get the biggest bang for the dollar. The biggest bang for the dollar is through negative campaigning. It is not through placid kinds of positive campaigning on the issues.

And so the result is that I think it would be bad for the whole system.

Mr. SABATO. Can I address—oh, I am sorry.

Mr. ALEXANDER. Go ahead, Larry.

Senator MCCONNELL. Larry?

Mr. SABATO. Well, I agree with virtually everything that Herb has said. And I would add this, in getting back to your original question. I do not want to get into the matter of press bias. But I do not want to call it press—

Senator MCCONNELL. Did you see Jim Glassman's column in the Post yesterday?

Mr. SABATO. Yes, I saw it. That is why I do not want to get back into it. I would not call it press bias. I would call it a progressive ethic in the press corps, which manifests itself in many, many different ways. And in this particular field, the progressive ethic manifests itself in one of the axioms of progressivism, which is that regulation is a good thing.

Now, in some areas, regulation is a great thing. It is necessary. In the area involving political speech and First Amendment rights, we ought to tread very, very carefully, much more carefully than we have and certainly much more carefully than we will if some of these truly God-awful campaign reforms that have been proposed are passed.

Now, why do not they cover it? I think it is because of that. If they looked at the system the way many of us in academe do, and if they understood that the Presidential system has not been this enormous success that it is often presented as being, but instead, in my view, has failed in many important ways, in this election year, for example, in addition to the example that Herb pointed out, when you look at what is really going to be spent, as opposed to what the public record will show, you will find that because those limits force money underground and over here

and through various pathways and byways, you will have a minimum of two dollars spent for every dollar that is disclosed. And my suspicion is it is much higher than two dollars for every dollar that is disclosed.

Is that what we want in congressional elections, too? And then you add on the FEC nightmare, and I have got many friends who work there and I love them, but, you know, they cannot manage the Presidential system.

Senator MCCONNELL. There would be more for you to love.

Mr. SABATO. Managing 535 congressional campaigns, too, this is laughable.

The CHAIRMAN. We really have to get moving. Do you want Mr. Ornstein to—

Senator MCCONNELL. Just to comment on the question.

The CHAIRMAN. Yes.

Mr. ORNSTEIN. Just a quick comment. I certainly agree that having State-by-State spending limits and an overall cap in this case is a disaster. But I want to put in a word or two for the good things in this system. I believe that having the matching funds for small individual contributions has been a positive thing on the Presidential side, and we could do it in a better way on the congressional side.

I also remember the kind of corruption and obsession with money that Hubert Humphrey used to talk about so eloquently when he was running for President in the general campaign, before we had some public money involved in this process. And if it has not worked perfectly, it has had a positive side to it in the general campaign. It certainly forces some things underground. But there are ways in which we can adopt some of those things in a more positive way to the congressional process.

Senator MCCONNELL. Thank you.

The CHAIRMAN. Now, Senator Dodd?

Senator DODD. Well, thank you, Mr. Chairman. There is a chorus here of—I do not want to disrupt the joyous celebration here. But I must say that I am intrigued with some of the ideas that some of you have raised, including some of yours, Mr. Alexander, Professor Alexander, and Mr. Ornstein's, as well. But I want to just pick up on the point that Mr. Ornstein had not raised that I would have.

I mean, people have very short memories when it comes to what systems were like, what the process was like, a few years ago. Now, it is not perfect by any stretch of the imagination. But to suggest somehow that we were on the right course when we had terrible problems, and the stories were humorous and anecdotal about how people would show up and candidates would keep the cash and report the checks, because they had to do it one way or another. I mean, it was just a process that was out of control and dangerous.

And I do not welcome, as well, a large bureaucracy, whether it is the Veterans Administration or others. But to someone who

is not an academic, but who is a candidate that has been through seven elections, I can tell you it is getting worse. And I made the point in this room before. I mean, the fact that I have to raise on the average in a small State—granted, an expensive media market, although I have used it very rarely in New York because of the cost of it, although I had to use it more in the last race than ever before, of \$16,000 a week, every week, 52 weeks a year for 6 years, in order to have the resources necessary to compete for reelection in a competitive race in a State of 3.5 million people, something is fundamentally wrong with that.

If you are out on the road—and I do not do it all in the last year. But when you go through evening after evening, day after day, hours spent out hustling for these dollars, there is something wrong with the system that needs to be addressed. Now, I say with all due respect, Professor Sabato, that just disclosure alone is not going to satisfy that. And while I do not disagree that you have got expenditures that go beyond those which we report, the notion somehow that that is going to go away is, I think, terribly naive.

And so I worry about this. And maybe only 1 percent show up. But this shows up in other ways, other than just asking people to list the priorities of issues that they think are wrong in the country. People are demonstrating their disgust with this system in a variety of other ways, less and less participation. The notion somehow that if you limit the amount of expenditures, you get more negative campaigning. I mean, with all due respect, Professor Alexander, you are living in a different world than I am as a candidate.

I watched people who have an inordinate amount of resources, it never restrained them at all. Negative campaigning is used because it works, and as much money as you can spend on it, you spend on it, because we know that how it motivates people. I have listened to these consultants year-in and year-out, and push and push and push about let us get negative, let us get worse, let us get tougher. And they never said, "Gee, we only have to do it because we have got less money to spend on these issues."

So again, I am a cosponsor of the McCain-Feingold proposal and have said, look, this is not perfect at all. What it has done is we have a hearing, thanks to the chairman of this committee who has invited people to come in and talk about this, and to urge us to try and come up with some ideas and ways in which we might try and get a handle on this. I just tell you, you know, if Bob Kerry was sitting here, he would tell you, the ability to attract candidates to run for public office today, the pool is shrinking. They are just shrinking all the time. And a good part of it is this issue.

You know, the idea that someone between the ages of 38 and 55 or 60, in their prime years, would drop what they are doing and run for public office, there are a lot of reasons why they are

not responding to that, but a major one is this one, unless they happen to have made a fortune on their own and doing very well financially. And then it becomes something they can engage in. But an average person deciding to make a run for Congress, a run for the State legislature in their State, just less and less of the notion of the Jeffersonian concept of citizen legislators, of people stepping forward, is becoming—maybe it was never as realistic as some might have wanted it to be. But, boy, it is a lot less so today than the last few years.

And so we can ridicule the McCain-Feingold ideas and so forth. And I agree with you, Professor Alexander, I want to see parties strengthened, as well. I think we could do a lot more in that area. And I appreciate the comments of all three of you in offering your voices to that. There is too much maligning of the political parties and not enough appreciation of how they contributed to the success of the century, in my view, has been written about.

But we have got to be more imaginative and more creative if we are going to try and do something about this. And again, I emphasize the point that I see a lot of difficulties with provisions of McCain-Feingold. And again, I am intrigued with some of your suggestions, Mr. Alexander, and clearly Mr. Ornstein's, as well, and ways in which we focus on the demand side, which I think is important on this question.

So I do not have any particular questions, Mr. Chairman. I have enjoyed the exchange between my colleague from Kentucky and the panel, and it has been helpful. And your statements are very interesting, as well, but I just take issue with a couple of the underlying premises that you raise. As someone who is out there, not only having been a candidate but now the chairman of a national party and going through this process, we are going to have our fund-raiser tonight. There is a big gala here in town. We are going to raise 12, 13 million dollars tonight.

The CHAIRMAN. On the question of advertising, I just went and got the—

Senator DODD. I thought I would get that on here.

The CHAIRMAN. —rule of the committee on books.

Senator DODD. Tickets are still available, no books. But you can still—

The CHAIRMAN. Wait a minute. Hold everything.

Mr. ORNSTEIN. Where is that going to be, Senator Dodd?

Senator DODD. That is going to be—I am glad you asked.

The CHAIRMAN. Thank you very much.

[Laughter.]

The CHAIRMAN. Thank you, Senator.

Senator DODD. Thank you.

The CHAIRMAN. Throughout my public service career, I have always invited criticism if people disagreed with a fundamental premise I have. And in each of the hearings thus far, I have articulated my concern, as best I could, that I do not want to see

the Congress, which is looking at this firestorm all across America, that we want to clean up politics and we want campaign finance reform, saying, well, let us cobble together anything, knowing in all probability that many sections therein are subject to constitutional question, and dump it over to another branch of the government, the judicial branch, and say, "Take it," and go back home, "I voted for campaign finance reform," knowing that the judicial review would undoubtedly take a period long past the elections coming in November.

Do you all have any concern along that line? Does anybody want to lead off on that? I just think we had better come to grips with this issue, figure out is there some residue out here that we honestly believe would work and would pass the Federal constitutional question and enact that, rather than cobbling a whole lot of steps together and throwing it out there to the judicial branch.

Yes, Professor?

Mr. SABATO. Senator, I think you are absolutely right. And that is why all of us had made some proposals, specific proposals, with all due respect to Senator Dodd, that go way beyond disclosure. None of us think disclosure is enough. That is why we propose tax credits and free television time and all the rest of it that we have discussed today, because there is a need for reforms. But they have to be the right reforms so that they do not end up increasing cynicism because we have another cycle of reform that does not work.

The CHAIRMAN. But you say the right reform. To me, that should apply only to the judicial content of the reform, because what the Republicans think is right understandably is different than what the Democrats think is right. And each of us have our constituencies, and we know what tools can be employed best to firm up the base and hopefully draw from the other side. So I am not so sure it is right and wrong. It is what will pass the judicial test that seems to me is my criteria.

Mr. ALEXANDER. Senator, there should be some goals, such as increasing participation. And to slap down groups which bring participation, you know, through bundling, PAC's, which encourage participation by members of unions or people who work with corporations or in trade associations, you know, I think that is important to encourage, not discourage. And so many of the laws or bills that come before you are designed to regulate and limit and prohibit, rather than to encourage.

What we are finding is an erosion of the financial base. That erosion takes place every time there is a new provision. It was said earlier that this was the same bill that the Democrats have suggested for the past 10 years, with the exception of the 60 percent rule of fund-raising within the constituency, within the district. That is an added requirement, and that, by the way, is also pointed against PAC's, because most PAC's are in the State capital or here in Washington, and not within the district.

The CHAIRMAN. Do you agree or disagree with the premise that we should not just cobble something together to get it out of here?

Mr. ALEXANDER. Well, I think there is plenty of need for incremental change.

The CHAIRMAN. Correct. But it has got to pass a reasonable constitutional test.

Mr. ALEXANDER. That is exactly right.

Mr. ORNSTEIN. But it is not just the constitutional test, Mr. Chairman, I think you have a responsibility. You certainly do not want to just say, "Oh, they want something. Let us just throw something out there." You certainly have a responsibility to make sure that you do not throw major issues to the courts and that you try and handle the constitutional issues before they are put out there.

You also have a responsibility to try and find some common ground and sensible solutions. And I would urge you to look at some of the things that each of us have proposed. I do not see any reason why necessarily a tax credit for small individual contributions is a Democratic or a Republican idea. I do not see why having the broadcast spectrum, as it extends to the digital arena, requiring stations as a part of getting this wonderful benefit, to provide some time that goes to candidates who raise small individual contributions is a Democrat or Republican idea. Expanding the frank—

The CHAIRMAN. Okay.

Mr. ORNSTEIN. —or a seed money mechanism. There are things that you can do that cut across those lines that would move in a positive direction and not necessarily a negative one, as some of the other ideas before you would.

The CHAIRMAN. One of your suggestions leads me to my next and last question, because I want to get to the next panel and I would hope each of you would address it and try and address it quickly. And I think I have to lay a little corn ball here that we all go through as candidates. We go to parades, and I guess I have been in 500 of them in my course of public life.

And the parade is a standard thing down in rural Virginia. The American Legion or the vets took the flag, a wonderful band, and then the obligatory section of the parade which you put up front, hopefully not to lose too many of the bystanders watching, of all the officials. And so you arrive at the parade. And here I am, the senior United States Senator. And as a rule, the parade marshall, in a very courteous way, says, "Senator, you do not mind if the mayor rides in front of you."

"Oh, I do not mind that."

"And how about the sheriff? We are going to put the sheriff up there."

"Oh, I will be glad to take any place in the parade," which is usually toward the end.

"Fine."

But my point is, in those local communities, they want to be respectful of the Senator. But believe me, the politician they are concerned about is the mayor or the sheriff, and everything else is secondary. And if we start saying in free television time that Presidential candidates get it, maybe Congress, and we cut off all these people down here, they are going to say, "Boy, is that inequitable."

And they are not talking about network television. They are talking about the local cable station which feeds into these rural communities. That is one of their primary sources. Now, how do we answer that question of equity in terms of running for political office and this growing interest in free TV?

Mr. ALEXANDER. Senator, you know, you mentioned candidates at lower levels. In this country, over a four-year cycle, we elect in excess of 500,000 public officials. And that is the largest number per capita of any country in the world. And most candidates for sheriff or for county office, whatever, do not get near a television camera. It is only the candidates for President, for statewide office, Senator and Governor, and sometimes in the larger cities, for mayor.

Beyond that, most candidates do not get near television. They cannot buy the time because they cannot afford it. And, of course, in many of those cases, they are not even opposed for local school board or for city council. And sometimes in small communities, you have to co-opt somebody to take that office.

The CHAIRMAN. But if they had the money, they would like to buy the local cable time.

Mr. ALEXANDER. Cable time is much less expensive.

The CHAIRMAN. Well, I understand that. But it is all a question of their own budget.

Mr. ORNSTEIN. But Senator, it is not your responsibility, I think. Your responsibility is for Federal elections. I would not give or mandate free time for congressional candidates. We have been through all the reasons why that is a bad idea, why I believe it is a bad idea.

Your responsibility is to try to improve the process for congressional and senatorial candidates, maybe for the President, although that is being taken care of in the private sector now, even as we speak. If States decide they want to do something with local cable, then they can go through their political process. I do not think you should even be worried about that. What you should be worried about is what you can do to improve the political process for the Senate, for the House and possible the President, period.

The CHAIRMAN. Professor Sabato, you are the wind-up.

Mr. SABATO. Senator, I will be very, very brief, because I really already addressed it earlier. I happen to agree with you. I think that local candidates and others should have access to the airwaves, too, to the cable stations, to the independent stations. And that is why I favor mandating the time, not as a grant to

candidates, but as a grant to political parties for general elections, and letting the parties in general elections, Senator, not primaries, allocate the time to their most endangered incumbents and their most promising challengers.

Senator MCCONNELL. Mr. Chairman, one final minute?

The CHAIRMAN. Yes.

Senator MCCONNELL. Just one minute. I am constantly surprised and, most of the time, actually amused by the comments that there is a clamoring for us to do something in this area. I want to quickly refer to the poll I mentioned earlier, the Tarrance Group poll taken in April of 1996, and just make two observations, reading straight out of the memorandum, explaining the findings of the poll: "Campaign finance reform is simply not on the radar screen with voters at this time. Just one person out of 1,000 volunteers the issue as the biggest problem facing the country."

Second observation: "When the subject is listed, still the relative low importance of campaign finance reform is substantiated further in the fact that it rates extremely low again, even when the issue is listed in a short recitation of prominent concerns, a mere 1 percent focus on campaign finance reform, with no more than 5 percent of any key group naming the issue."

So there is no public clamoring. We ought not to respond by passing bad legislation to public clamor that does not exist. Second, as I have said repeatedly, and I wish my friend, Chris Dodd, was still here, it is demonstrably not true that Senators spend all their time raising money. Eighty percent of the money raised in Senate cycles is raised in the last 2 years. In fact, in the last cycle, 85 percent was raised in the last 2 years.

So it is demonstrably false that Senators are spending all of their time raising money. Finally, Mr. Chairman, the notion that the current system, which I hate to be defending—it is just that it is so much better than any of these solutions that have been offered. With regard to the suggestion that somehow the current system is discouraging candidates, in 1994, we had a record number of people run for Congress as Republicans.

In fact, I am told that at the beginning, before they were weeded out in the primaries, more people filed for office as Republicans in 1994 than did as Democrats. We believe that did not happen, had not happened, since the 1920's. So this assertion that somehow people are being scared away from running for public office because of the system is simply also demonstrably false.

Thank you very much, all three of you. I enjoyed your testimony.

The CHAIRMAN. We thank you. It has been an excellent panel, and we will now proceed to our second panel. The Chair wants to put in today's record a reference to Title 40 U.S. Code, Section 193(d), "It is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard,

or other form of advertisement therein, to solicit fares, alms, subscriptions, or contributions therein." And the committee wants to observe that rule. I do not see any books or other items here among this panel. And I just wish to advise the witnesses beforehand here. We also have certain rules for the Senate which expand on that.

[Excerpt from the Rules for Regulation of the Senate Wing follows:]

RULE XIII—PEDDLING, BEGGING, ETC.

Peddling, begging, and the solicitation of book or other subscriptions are strictly forbidden in the Senate wing of the Capitol, and no portion of said wing shall be occupied by signs or other devices for advertising any article whatsoever excepting timetables in the Post Office and such signs as may be necessary to designate the entrances to the Senate Restaurant.

The CHAIRMAN. Very well. We will now turn to this panel. And we have, from the University of Virginia—there seems to be a propensity to have University of Virginia persons today—Professor BeVier, whom I have had the privilege of knowing for many, many years. But quite apart from my knowledge, she is respected nationwide for her contributions in this area of the law. She is the Doherty Charitable Professor and Elizabeth D. and Richard A. Merrill Research Professor at the University of Virginia Law School, graduated from Smith College and from Stanford Law School. She has been teaching at Virginia since 1973. She teaches a wide variety of courses, including property and constitutional law, has written extensively about the First Amendment and has published two significant Law Review articles on campaign finance, also. We welcome you, Professor.

We have Frederick Schauer, John F. Kennedy School of Government, Harvard University. Professor Schauer is the Frank Stanton Professor of the First Amendment, John F. Kennedy School of Government at Harvard, the holder of A.B. and B.A. degrees from Dartmouth and a J.D. from Harvard University, formerly a trial lawyer before embarking on his academic career.

Professor Nelson, we somehow missed yours. Would you kindly give us the sketch?

Ms. NELSON. Yes. I am sorry. I asked my assistant to fax it over and I am sorry that you did not get it. I am Assistant Professor of Government and Director of the Campaign Management Institute at American University. I am the co-author of *The Money Chase*, which I did not bring with me, a book on congressional campaign finance reform, as well as numerous other articles and book chapters on that topic.

The CHAIRMAN. Why do not you be our lead-off witness, then? Oh, I am going to interrupt a minute. One of our panel has indicated that they have a noon flight. And therefore, Professor Schauer, I am sure your colleagues at the bench there, will be happy to yield to you.

TESTIMONY OF A PANEL CONSISTING OF PROFESSOR
 FREDERICK SCHAUER, FRANK STANTON PROFESSOR OF
 THE FIRST AMENDMENT, JOHN F. KENNEDY SCHOOL OF
 GOVERNMENT, HARVARD UNIVERSITY, CAMBRIDGE,
 MA; CANDICE J. NELSON, ASSISTANT PROFESSOR OF
 GOVERNMENT, THE AMERICAN UNIVERSITY, WASH-
 INGTON, DC; AND LILLIAN R. BEVIER, DOHERTY CHAR-
 ITABLE FOUNDATION PROFESSOR OF LAW, UNIVERSITY
 OF VIRGINIA LAW SCHOOL, CHARLOTTESVILLE, VA

Mr. SCHAUER. Thank you very much. My reason for leaving early is that I must get back to teach a class. My students will appreciate it.

The CHAIRMAN. Are you sure of that?

[Laughter.]

The CHAIRMAN. All statements, as a matter of course, by unanimous consent are placed in the record.

Mr. SCHAUER. Yes. And you have my written statement.

It is unlikely that a bearded Harvard professor with a Newark accent will be able to claim to be a simple country lawyer. I do, however, want to make my presentation a little bit simpler and a little bit less theoretical than some of the presentations you have heard on this issue. I am not here to hawk books or proposals. I am not here representing anyone. And pursuant to my desire to be simple and straightforward, I want to draw a reasonably rigid distinction between what the law is and what the law ought to be, and focus only on the former.

In that context, I want to focus on the central features of McCain-Feingold, which has obviously been the centerpiece of this discussion. McCain-Feingold is not a proposal that I have particular views about in terms of its political merits. I am here only to talk about the question of constitutionality. Indeed, even more narrowly, I am here to take up Senator Warner's suggestion that I talk about the question of constitutionality in light of what the Federal courts have in fact decided.

As I said in my written statement, I believe that in evaluating the terms of the three central features of this proposal in light of existing Federal case law, one appears likely unconstitutional and two appear likely constitutional. Under the existing case law, the proposal regarding limitations on political action committees, as it currently is presented, is almost certainly unconstitutional.

On the other hand, there are two other proposals that have generated a fair amount of constitutional controversy in this context, but both of these are constitutionally permissible under the existing case law. First is the proposal to offer inducements to those Senate candidates who would voluntarily limit their campaign expenditures, recognizing that they do have a right, under *Buckley v. Valeo*, to spend as much as they choose.

The Supreme Court has, in fact, addressed this issue. This is discussed at length in my written statement, but let me just quote the Court again for the record and for this audience: "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fund-raising and accept public funding."

That is, as a matter of theory, as a matter of constitutional and political philosophy, and as a matter of questions about what is frequently called the doctrine of unconstitutional conditions, a reasonably controversial statement by the Supreme Court. Nevertheless, it is the Supreme Court's last word on the subject, with the possible exception of its summary affirmance in the 1980 case of *Republican National Committee v. Federal Election Commission*.

Although there are arguments that might be made against the wisdom of what the court said in *Buckley*, in light of existing Federal case law the proposal to offer inducements to Senate and congressional candidates to voluntarily limit their campaign spending is extremely likely to be constitutional under current case law. Even though there might be debates about whether such an exchange is truly voluntary, the existing case law plainly permits it.

Second, I want to address briefly an issue that also comes up in the context of this bill, although I understand that it is to be much more to be the focus of your hearings a week from today. The inducement that McCain-Feingold purports to offer is the inducement of some free air time and some discounted advertising time.

If McCain-Feingold were to offer free or discounted space in The Washington Post, The New York Times and other forms of the print media, it would be patently unconstitutional. On the other hand, by offering broadcast time, Congress is, under the analysis in *Red Lion Broadcasting v. FCC* in 1969, offering something that belongs to the public rather than belonging to private publishers. In this regard, again, *Red Lion*, is itself controversial. But although its basis is debatable, it represents the current state of the law. As Justice White said in *Red Lion*, "A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the government from requiring a licensee to share his frequency with others. Rather than confer frequency monopolies on a relatively small number of licensees, the government could surely have decreed that each frequency be shared among some or all of those who wish to use it."

I will not pursue this issue further, because you will be talking about this more next week. Still, I am here this week and not next week.

The CHAIRMAN. Let me interrupt a minute.

Mr. SCHAUER. Sure.

The CHAIRMAN. We want to accommodate you.

Mr. SCHAUER. Okay.

The CHAIRMAN. Could we have someone here arrange to hold a taxi outside for you, because if you have got a 12 o'clock flight, you have got to leave in about 5 minutes?

Mr. SCHAUER. That would be wonderful.

The CHAIRMAN. We will arrange to do that.

Mr. SCHAUER. Thank you.

The CHAIRMAN. And we will escort you to the taxi.

Mr. SCHAUER. I appreciate it, Senator.

The CHAIRMAN. Secondly, we need 1 or 2 minutes for my colleague to engage you in a colloquy.

Mr. SCHAUER. Yes. You have my statement. You just have had a summary of it. I am happy to discuss the issue with you and your colleague.

Senator MCCONNELL. Well, just very quickly, since you are, I think, the only law professor I have heard suggest that this law might be constitutional, I just do want to take a moment to point out that you ignored some relevant parts of the *Buckley* case. *Buckley* said just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fund-raising and accept public funding. The court's authorization has been interpreted to mean that spending limits, as a condition of receiving public Federal campaign funds, are constitutionally valid "as long as the candidate remains free to engage in unlimited private funding and spending instead of limited public funding."

It is worth remembering that *Buckley* upheld public funding because its purpose was "not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." That is straight out of the *Buckley* case.

The legitimate government interest in public financing is to enhance access to public discourse and the political process, not to restrict it in any manner. The measure before us seeks to restrict speech, and so I just want to suggest—I know you have got to run.

Mr. SCHAUER. Yes.

Senator MCCONNELL. I do not share your view, and most professors of law that I have spoken with, share your view that those portions to which you referred as constitutional or likely to be found constitutional.

Mr. SCHAUER. Senator, the issue you raised was, in fact, the issue in terms of expenditure limitations that was before the

Federal courts, *Republican National Committee v. Federal Election Commission*. It is in that case that the argument you just presented was rejected by a three-judge court. And although I will make no strong claims about the precedential effects of the summary affirmance, there was a summary affirmance by the Supreme Court. The key word in the passage you quoted was "instead." As long as a candidate has a choice, under *Buckley* the inducement plan is constitutionally permissible. And the choice available here is just like the choice upheld in the *Republican National Committee* case.

My focus here has been on what the case law in fact says. In my somewhat—I do not want to use this word to mean too much—fancier role as First Amendment theorist and constitutional theorist, as someone who thinks about what the case law should be rather than what the case law is, I can engage the kinds of questions that you have just suggested. And indeed, most of my colleagues in the constitutional professorate are quite happy to immediately ascend from the level of what the cases say to the level of what the cases ought to say. That is, in fact, most of what we make our living doing. But that is not what I am doing here.

I do think it is entirely appropriate for you to say, as you have suggested: "I have, as a Senator and as someone who has taken an oath to uphold the Constitution, an obligation to interpret the First Amendment as I see it, rather than just as the Supreme Court has seen it." That is entirely within your province.

But if the question is a prediction based on existing cases of what the Federal courts are likely to do, most of the arguments that I have seen, including most of the arguments that are made by law professors, are predictions that are influenced to a substantial degree by views about what *Buckley v. Valeo* ought to have said, rather than what it did say, and about what subsequent cases ought to have said, rather than what they did say. Moreover, the objections to this aspect of *Buckley* presuppose a particular libertarian conception of the First Amendment that is certainly a plausible one, but it is one that is, at the very least, debatable after *Austin v. Michigan Chamber of Commerce* recently; indeed, somewhat more closely debatable than people have previously thought.

But if we stick to the question that pervades these hearings, and pervades Senator Warner's comments earlier, we can say that not every bad idea is unconstitutional and not every good idea is constitutional. We can separate the constitutional question, in terms of what the courts have said, from the policy question. I think we can and should have an important policy debate that would incorporate theoretical ideas about what the idea of free speech is all about.

But if the question is what does the case law say, the quote that I read does not have any ellipses in it. It comes directly from *Buckley*. The argument you have just made can be debated at a

theoretical level, but it is an argument that was rejected by the courts several years after *Buckley*. You can vote against this bill as inconsistent with *your* conception of the First Amendment, but voting against the bill on the assumption that it is clearly inconsistent with existing Supreme Court and other Federal court precedents is not an accurate characterization of that precedent. Thank you.

The CHAIRMAN. And this very capable professional here has taken your emergency situation, and she is ready to get you to that airport.

Mr. SCHAUER. I very much appreciate the accommodation of both of you.

The CHAIRMAN. I appreciate your coming down.

Mr. SCHAUER. And I hope that the length of my written statement will supplement for my early departure. I apologize to my colleagues for not being able to engage with them.

The CHAIRMAN. You can tell your students what a great morning you had.

[Laughter.]

Mr. SCHAUER. Thank you. Thank you, Senator.

[The prepared statement of Professor Schauer follows:]

PREPARED STATEMENT OF PROFESSOR FREDERICK SCHAUER, JOHN F. KENNEDY
SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, CAMBRIDGE, MA

My name is Frederick Schauer, and I am the Frank Stanton Professor of the First Amendment at the Kennedy School of Government, Harvard University, and Visiting Professor of Law, Harvard Law School. Out of an abundance of caution, I note at the outset that I speak only for myself, and not for the Kennedy School of Government, the Harvard Law School, or Harvard University. I should note as well that my political affiliation is independent, and I have not registered as a member of a political party in over 20 years. Moreover, I have no political, financial, or fiduciary connections with anyone who might be helped or hurt were this legislation to be enacted. Indeed, consistent with my longstanding practice, and consistent with my views about academic independence, I do not represent clients, directly or indirectly, and I do not enter into consulting relationships. Although I am here as a consequence of a request for a constitutional analysis from Senator Feingold's office, I have had no prior dealings with Senator Feingold or any individual or organization interested in the passage or defeat of this legislation. When Mr. Kutler of Senator Feingold's office first called me to ask if I might undertake this analysis, he did not inquire about my views, tentative or otherwise, on the advisability or constitutionality of this or related legislation.

For constitutional purposes, the principal features of S. 1219, the Senate Campaign Finance Reform Act of 1995, are Section 101, which provides various incentives to Senate candidates who limit their total campaign expenditures, Sections 102 and 103, which provide free broadcast time and reduced broadcast advertising rates as part of that package of incentives, and Section 201, which prohibits political action committees from contributing to candidates for federal office. I will consider them in turn.

Section 101 would amend the Federal Election Campaign Act of 1971, the Communications Act of 1934, and several other laws by providing to Senate candidates who agree to limit their total campaign expenditures a package of incentives consisting primarily of discounted broadcast advertising rates (section 103), thirty minutes of free broadcast air time (section 102), and discounted postal rates for campaign mailings (section 104).

In evaluating the constitutionality of this proposal, two potential constitutional problems are presented. One is the indirect restriction, by way of incentives, on candidate expenditures of their own resources, expenditures that since *Buckley v. Valeo*, 424 U.S. 1 (1976), have been considered to be themselves protected by the First Amendment. Another is the potential restriction on the First Amendment rights of broadcasters to allocate their air time as they see fit. I will address these concerns in that order.

In *Buckley v. Valeo*, the Supreme Court held unconstitutional a restriction on the amount of a candidate's own funds (the major corollary of permitting contribution limitations) that he or she could spend in the context of an election. 424 U.S. at 39-59. The Court held that the First Amendment protected the right of a candidate to spend an unlimited amount of his or her own funds in the service of advocating his or her candidacy. The Court reasoned that since spending one's money to make a political speech or support a political cause was plainly protected by the First Amendment, it would be anomalous to create an exception where the political cause was the cause of one's own election to office. And although this dimension of *Buckley* was criticized then, and is still criticized today, there is little in subsequent developments to indicate that it is not "the law." In no subsequent campaign financing case, and there have been about a dozen, has the Supreme Court retreated in any way from its 1976 conclusion that personal expenditure limitations violate the First Amendment.

Although this bill does not directly restrict the right recognized in *Buckley*, it does provide an incentive for candidates to relinquish that right. In many other contexts, this form of indirect restriction would create the constitutional problems often discussed under the rubric of "unconstitutional conditions." See *Speiser v. Randall*, 357 U.S. 513 (1958). To take an obvious example, it would be plainly unconstitutional for the federal government to offer a tax credit to anyone who agreed not to criticize the President, and it would be equally unconstitutional to provide discounted postal rates for pro-American but not anti-American publications, or for Protestant but not Catholic magazines. The idea of the doctrine of unconstitutional conditions is that it is impermissible to allow the government to do indirectly what it cannot do directly, and that the potential for such indirect restrictions are enormous given the number of governmental programs on which people routinely depend. See also *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987).

Yet the doctrine of unconstitutional conditions, even in First Amendment context, is much narrower than the First Amendment itself. As the Supreme Court (controversially) held in *Rust v. Sullivan*, 500 U.S. 173 (1991), the doctrine does not require the government to be neutral in terms of the programs it wishes to create or the activities it wishes to subsidize. See also *Regan v. Taxation With Representation of Washington*, 461 U.S. 540 (1983). The government may support a Fund for Democracy without having to offer equal support for the Fund for Theocracy or the Fund for Aristocracy. Similarly, there is no doubt that a high level employee of the Department of Defense can be required as a condition of employment to relinquish his or her right to express public support for the present government of Iraq, even though that right is one protected by the First Amendment when exercised by ordinary citizens. Although there is some force to the doctrine of unconstitutional conditions, it is thus a mistaken oversimplification to maintain that citizens may not constitutionally be induced by government to give up what would otherwise be their constitutional rights. Especially when the restriction is not, as it is not here, one based on the viewpoint of the speech, it is a misstatement of the current law to say that it is unconstitutional for the government to provide incentives for citizens to forgo their right under *Buckley v. Valeo* to spend unlimited funds in support of their own political candidacies.

Although reasonable minds might disagree with the foregoing analysis, it is clear that the Supreme Court in *Buckley* did not. In *Buckley* the Court explicitly concluded, even while it was protecting the First Amendment rights of expenditure, that Congress could, consistent with the First Amendment, provide incentives to encourage political candidates to accept voluntary limitations on their own campaign expenditures.

Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding. 424 U.S. at 57 n.65.

In *Buckley* the question arose in the context of Presidential campaigns, but the Court's just-quoted broad statement was not so limited, nor is there any reason to suppose that there could be a plausible distinction between the Senatorial campaigns that are the subject of S. 1219 and the Presidential election financing plan that prompted the Court's broad statement in *Buckley*. Moreover, when a three-judge United States District Court in 1980 explicitly rejected an attack on voluntary expenditure limitations in exchange for public financing, and when the Supreme Court summarily affirmed that judgment, the argument that the exchange was not truly voluntary was rejected. *Republican National Committee v. Federal Election Commission*, 487 F. Supp. 280 (three-judge court, S.D.N.Y. 1980), *affirmed without opinion*, 445 U.S. 955 (1980).

In examining the incentives in S. 1219, I cannot see any appreciable difference, on this issue, and from the perspective of the candidate, between public funding, as in *Buckley*, and the free air time and discounted advertising and postal rates that are offered in S. 1219. First, neither is an antecedent entitlement. If what is offered by the government is what the candidate would otherwise have been entitled to, either as a matter of statute or constitutional law, then the above-quoted statement from *Buckley* is inapplicable. But if the statute provides to the candidate something the candidate is not otherwise entitled to, as is surely the case here with free air time and discounted advertising and postal rates, then *Buckley* controls and makes the exchange constitutionally permissible. Moreover, both the approach approved in *Buckley* and the approach proposed here have the effect of providing financial benefits for the candidate, and any difference between the two would be a difference, from the candidate's vantage point, of form and not of substance. Indeed, the discounts available under S. 1219 are, if there is any difference at all, somewhat less direct. If a direct cash subsidy is not, in the Supreme Court's eyes, an unconstitutional inducement to relinquish a constitutional right, then it is hard to see how the indirect inducements in S. 1219 would be.

This is not to suggest that there is no merit in the argument that the inducements offered make the seemingly voluntary relinquishment not voluntary in fact. The line between an inducement whose acceptance is truly voluntary and one that begins to verge on the coercive is a wavering one, and the special circumstances of a political campaign, in which acceptance by a candidate's opponent would make the rejection of the inducement even more costly, accentuate this effect. Insofar as S. 1219, in section 105, offers increased benefits to candidates whose opponents reject the limitations, the coercive effect increases. Yet the fundamentals of this phenomenon existed in *Buckley* itself, since even without an amount keyed to acceptance or rejection by a candidate's opponent, a candidate still is faced with a choice under circumstances in which the candidate's opponent will be subsidized by the government. Nor is there any suggestion in *Buckley* that the constitutionality of the conditional public funding should depend on case-specific determinations of the circumstances under which a candidate exercised the option. Thus, the grounds for current objections existed in large part in *Buckley* and existed in all of the subsequent court decisions, all but one of which have accepted the exchange that provides the linchpin of S. 1219. So although there are plausible objections to the voluntariness of the arrangement in S. 1219, these objections go back to *Buckley* itself, which concluded as a matter of law that such exchanges were voluntary rather than suggesting that a case-specific and factual voluntariness inquiry was a condition for constitutional acceptability. This leads me to conclude that the various objections now offered to S. 1219 and related proposals are not so much to the unconstitutionality of S. 1219 under current law, but rather to the state of the current law itself. The essence of the objection is far less that *Buckley* supports the objection than that *Buckley* was mistakenly decided. But from the perspective of *Buckley* as the law, the induce-

ments to candidates to relinquish in sections 101 and 241 what might otherwise be their constitutional freedom is explicitly permissible.

Much the same characterization applies to S. 1219 as a restriction on broadcasters. In giving candidates broadcast time, S. 1219 does to broadcasters what it plainly could not do to newspaper publishers were the time (or space) offered to be in newspapers, magazines, or even, in most contexts, cable television. Under *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), the First Amendment protects total editorial control over the contents of a newspaper, even in the face of a claim that granting space in a newspaper would broaden rather than narrow the range of public debate. There is no doubt, therefore, that the First Amendment would not allow Congress to provide free or discounted newspaper space (without the consent of the newspaper, of course) as part of the inducement for candidates to accept voluntary expenditure limitations.

Broadcasters are not newspapers, of course, not only as a matter of fact, but also as a matter of law. The Supreme Court rejected the broadcaster-newspaper analogy in *Red Lion Broadcasting Company v. Federal Communications Commission*, 395 U.S. 367 (1969), agreeing with the congressional judgment expressed in the Radio Act of 1927 and the Communications Act of 1934 that the airwaves were public property, to be assigned in the public interest, and subject to limitations designed to ensure that the public retained part of their use.

A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the government from requiring a licensee to share his frequency with others . . . Licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them. . . . Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of 200,000,000, the Government could surely have decreed that each frequency be shared among all or some of those who wished to use it, each being assigned a portion of the broadcast day or the broadcast week.

Like the regulations at issue in *Red Lion*, the provisions in S. 1219 do not go nearly as far as to grant to a licensee only a small portion of the broadcast day. But Justice White's conceptualization in *Red Lion* was designed to suggest there that all the government was doing was holding back part of its airwaves and giving it to other points of view, a strategy embodied in the personal attack, equal time, and (now obsolete) fairness doctrine. The same conceptualization applies here, since what S. 1219 does has the effect of "giving" some of the time encompassed by a broadcast license to the public.

In rejecting the claim that broadcasters have an unlimited First Amendment right to unfettered editorial control over the time encompassed by their license, the Supreme Court in *Red Lion* relied in part on the controversial notion that the airwaves "belonged" to the government and could thus be licensed subject to otherwise impermissible content-based restrictions, and in part on the even more controversial, and potentially technologically obsolete, argument that because there were a limited number of broadcast bands (what is known as the scarcity argument), those bands could be allocated under content-based conditions that would never be permitted for newspapers. Again, however, it is very important to distinguish complaints about the existing law from the argument that the existing law prohibits this legislation. As long as *Red Lion* remains the law, Congress may within limits consider broadcast time to belong to the public, and to be subject to allocation in the public interest. In this respect, therefore, price restrictions on advertising, and direct grants of broadcast time, will not violate the First Amendment as it is presently interpreted.

Finally, I will turn to the Political Action Committee (PAC) contribution limitation in Section 201. Unlike section 101, this restriction, in light of *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480 (1985), is likely unconstitutional under current law, although the narrow majority opinion in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), might provide some basis for suggesting reconsideration of the earlier cases. Given the state of the law, however, the issues now are much different, involving questions about

the responsibility of Congress in the face of contrary Supreme Court precedent. There is a line of academic and political opinion that maintains that Congress should engage in its own direct consideration of what the Constitution requires, without regard for, or at least not subject to the authority of, contrary Supreme Court opinions. I do not subscribe to this view, and I do not urge it on you, although the reasons for my belief encompass the full domain of constitutional jurisprudence. Since this is not the place to engage that issue, I will simply assume that you believe that Congress should respect the role of the Supreme Court as authoritative interpreter of the Constitution.

Yet even within this view, it is of course possible in good faith to believe that times change, that Justices change, and that constitutional law changes. And it is possible, therefore, to believe that Congress can act responsibly in giving the courts the opportunity to reconsider their earlier views in light of changed circumstances or in light of the possibility that their earlier views may have been mistaken. The rapidly escalating cost of elections make this a plausible circumstance to give the Supreme Court this opportunity, and just as it is "legitimate" for opponents of section 101 to believe in good faith that the Court should reconsider its judgment in *Buckley* that public inducements for voluntary expenditure limitations do not violate the First Amendment, so too is it legitimate for proponents of section 201 to believe in good faith that changing circumstances, or the bipartisan nature of this initiative, are sufficient to invite the Court to reconsider its judgment in *Federal Election Commission v. National Conservative Political Action Committee*. Still, as a matter of existing case law, section 201 is far more problematic than Section 101.

To conclude, I believe that existing case law strongly supports the constitutionality of section 101 and casts considerable doubt on section 201. In both cases, there are arguments that could be made that the case law is mistaken, but it remains important to distinguish arguments against the case law from arguments from the case law. In this connection, I should mention that in addition to being a specialist in constitutional law, I teach and write in the area of the philosophy of law, and with respect to the debates in that field I am regularly aligned with the perspective commonly known as legal positivism. The legal positivist believes in the possibility and the importance of separating what the law is from what the law ought to be. My comments here have been consistent with that view. We can and should debate what the law, including the law of the First Amendment, ought to be. But if the question is what the law is, and if that question refers primarily to the existing case law as set out by the Supreme Court of the United States, then according to what the law is, rather than according to what the law ought to be, Sections 101, 102, 103, 104, and 241 are almost certainly constitutional, and section 201, at least in its September 7, 1995 version, is almost certainly not.

The CHAIRMAN. Thank you. Professor Nelson?

TESTIMONY OF DR. CANDICE J. NELSON, ASSISTANT PROFESSOR OF GOVERNMENT, DIRECTOR, CAMPAIGN MANAGEMENT INSTITUTE, THE AMERICAN UNIVERSITY, WASHINGTON, DC

Ms. NELSON. Thank you. Mr. Chairman, Senator McConnell, thank you for the opportunity to testify with respect to S. 1219. I would like to commend Senators McCain and Feingold, as well as the other co-sponsors of this legislation, for their bipartisan approach to this issue. For too long, the debate over campaign finance reform has been clouded by partisanship. The co-sponsors of this bill have set aside partisan differences to work toward the campaign finance reform bill that is bipartisan and can be debated on the substance of the issues involved.

This legislation, while not perfect, would, I believe, go a long way toward leveling the playing field in Senate elections. This legislation would control the cost of campaigns and expand the resources available to Senate candidates. First, by establishing reasonable voluntary spending limits, the legislation would bring under control the money chase that candidates for the U.S. Senate currently endure.

I was struck by the near uniform call for campaign finance reform among Senators who announced their retirement during the past year. Even Senators who have not been active proponents of campaign finance reform while in office denounce the current system of campaign finance and were near unanimous in citing the cost of running for office as one reason for their retirement.

While we can debate whether too much or not enough money is spent in Senate elections, what we do know is that the cost of Senate elections and the time spent raising the money to run for the U.S. Senate, as Senator Dodd referred to earlier, takes time away from other activities and all too often discourages potential candidates from seeking congressional office.

In the late 1980's, the Center for Responsive Politics surveyed House and Senate members and staffers on a wide variety of legislative procedures and processes. When asked if demands of campaign fundraising cut into time spent on legislative work, over one-half, 52 percent, of Senators and their staffers replied that campaign fundraising significantly impacted their legislative work, and another 12 percent said that campaign fundraising had some effect on legislative time. Only 28 percent of Senators and their staffers, less than one-third, replied that campaign fundraising had no impact on legislative time.

Not only would spending limits control the costs of campaigns, and thus bring under control the amount of time spent raising money, but spending limits would also reduce the discrepancy between incumbent and challenger spending in Senate elections. If the spending limits in this bill had been in effect for the 1994 Senate elections, 23 of the 26 incumbents running would have exceeded the limits, compared to only 7 challengers, and 2 of those challengers were Oliver North and Michael Huffington, who spent \$20 million and \$30 million respectively on their races.

Senator MCCONNELL. [Presiding.] Both of them lost, right?

Ms. NELSON. Yes. Of those 19 challenges who spent less than the limits in the bill, 9 were Republicans and 10 were Democrats.

Second, spending limits are not the only provisions in this bill which would help level the playing field in Senate elections. As you know, voter contact is the key in a political campaign. A typical campaign will spend 70 to 75 percent of its budget on voter contact. The most expensive voter contact devices are mail and media, and this bill, by providing for discounted rates for both direct mail and paid media, would decrease the costs of

voter contact and increase the abilities of candidates to communicate with the citizens of the State.

By providing a discounted postage rate for a number of pieces of direct mail equal to two times the voting-age population of the State, candidates would be able to mail virtually all their direct mail at a discounted rate. As campaigns have become more specialized and targeting has become more sophisticated, direct mail has become an increasingly important voter contact device. For candidates to be able to do all of their mailings at a discounted rate would both increase the resources of the campaign and enable candidates with more limited resources to extend the purchasing power of those resources.

Similarly, the ability to purchase television time at 50 percent of the lowest unit rate would greatly increase candidates' opportunities to reach voters through paid media. Senate campaigns spend anywhere from two-fifths to three-quarters of their campaign budget on paid media, and the majority of that paid media budget in a statewide race is for television. Typically, candidates do not pay the lowest unit rate because they don't want their paid media to be pre-empted. By assuring candidates of reduced cost air time, candidates who typically have little or no money for television would be able to have opportunities to get their message to the voters.

Third, this legislation, by requiring Senate candidates to raise 60 percent of their campaign contributions from constituents within their State, restores a balance between a candidate's electoral constituency and his or her financial constituency. Theories of representation argue that a Senator's most important constituency should be his or her electoral constituency—the men and women who voted for him or her. However, the nationalization of campaign finance in congressional elections has meant that Senate candidates raise substantial sums of money outside their States. During one period in the 1980's, eight Senators raised more than 90 percent of their campaign contributions outside their State. By restricting the amount of money a Senate candidate can raise outside the State, this legislation recognizes the importance of a Senate candidate raising the majority of his or her money from within the State.

Finally, I would like to address the ban on soft money in Federal elections. When I give talks on campaign finance reform, no matter who the audience, the most incomprehensible part of the current system of campaign finance is the distinction between hard and soft money. People in both this country and other countries do not understand why there are contribution limits for some activities but not others. That an individual can contribute \$20,000 to a political party in hard dollars yet can contribute unlimited amounts in soft money seems to Americans to undermine the existence of contribution limits.

I think we do need to get more money to the political parties, but I think we need to do it without a system that seems to undermine the very limits that we have.

I appreciate the ability to testify before you, and I thank you for the opportunity.

[The prepared statement of Ms. Nelson follows:]

PREPARED STATEMENT OF DR. CANDICE J. NELSON, THE AMERICAN
UNIVERSITY, WASHINGTON, DC

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify with respect to S. 1219, the Senate Campaign Finance Reform Act of 1995.

First, I would like to commend Senators McCain and Feingold, as well as the other co-sponsors of this legislation, for their bi-partisan approach to this issue. For too long the debate over campaign finance reform has been clouded by partisanship. The cosponsors of this bill have set aside partisan differences to work towards a campaign finance reform bill that is bi-partisan and can be debated on the substance of the issues involved, without partisan constraints.

This legislation, while not perfect, would go a long way towards "leveling the playing field" in Senate elections. This legislation would control the costs of campaigns, expand the resources available to Senate candidates, and increase accountability in Senate elections.

Controlling Campaign Costs

By establishing reasonable, voluntary spending limits the legislation would bring under control the money chase that candidates for the U.S. Senate currently endure. I was struck by the near uniform call for campaign finance reform among Senators who announced their retirement during the past year. Even Senators who have not been active proponents of campaign finance reform while in office denounced the current system of campaign finance and were nearly unanimous in citing the costs of running for office as one reason for their retirement.

While we can debate whether "too much" or "not enough" money is spent in Senate elections, what we do know is that the costs of Senate elections, and the time spent in raising the money to run for the U.S. Senate, takes time away from other activities and all too often discourages potential candidates from seeking congressional office. In the late 1980's the Center for Responsive Politics surveyed House and Senate members and staffers on a wide variety of legislative processes and procedures. When asked if the demands of campaign fundraising cut into the time spent on legislative work, over one-half, 52 percent of Senators and their staffers replied that campaign fundraising significantly impacted their legislative work, and another 12 percent said that campaign fundraising had some effect on legislative time. Only 28 percent of Senators and staff, less than one-third, replied that campaign fundraising had no impact on legislative time.

Not only would spending limits control the costs of campaigns, and thus bring under control the amount of time spent raising that money, but spending limits would also reduce the discrepancy between incumbent and challenger spending in Senate elections. If the spending limits in this bill had been in effect for the 1994 elections, 23 of the 26 incumbents running would have exceeded the limits, compared to only seven challengers, and two of those challengers were Oliver North and Michael Huffington, who spent \$20 and \$30 million respectively. Of those 19 challengers who spent less than the limits in the bill, 9 were Republicans and 10 were Democrats.

In 1994 there were nine open seat races. In five of those races at least one candidate spent less than the spending limits, and in two of the races both candidates spent less than the spending limits. By placing a ceiling on the amount of money that could be raised and spent in Senate elections, this bill would curtail the endless money chase that candidates for the U.S. Senate currently have to endure.

Expanded Resources

Spending limits are not the only provisions in this bill which would help level the playing field in Senate elections. As you know, voter contact—reaching potential voters to inform them about the candidates—is the key element in a political campaign. A typical campaign will spend 70 to 75 percent of its budget on voter contact. The most expensive voter contact devices are mail and media, and this bill, by providing for discounted rates for both direct mail and paid media, would decrease the costs of voter contact and increase the abilities of candidates to communicate with the citizens of the State.

By providing a discounted postage rate for a number of pieces of direct mail equal to two times the voting age population of a State, candidates would be able to mail virtually all their direct mail at a discounted rate. As campaigns have become more specialized and targeting has become more sophisticated, direct mail has become an increasingly important voter contact device. For candidates to be able to do all of their mailings at a discounted rate would both increase the resources of the campaign and enable candidates with more limited resources to extend the purchasing power of those resources.

Similarly, the ability to purchase television time at 50 percent of the lowest unit rate would greatly increase candidates' opportunities to reach voters through paid media. Senate campaigns spend anywhere from two-fifths to three-quarters of their campaign budget on paid media, and, for most Statewide campaigns, the majority of the paid media budget is for television. Typically, candidates do not pay the lowest unit rate for paid media, because they do not want to be preempted. By assuring candidates of reduced cost air time candidates who typically have little or no money for television advertising would have more opportunities to get their message to voters through paid media.

The 30 minutes of free media would likely be most useful to candidates near the end of the campaign. Whether candidates divided their time into six 5-minute spots or 60 30-second spots, or some other mix of the time, the free time would at least allow all candidates some opportunity to reach voters, through television, with their campaign themes and messages.

This legislation will make it less expensive for candidates to communicate with potential voters through direct mail and paid television spots. For candidates who are able to raise and spend up to the spending limits of the bill, it may mean more voter contact than they currently engage in. For candidates who are not able to raise and spend up to the spending limits, it will mean that the money they do raise will allow them to do more voter contact than they are currently able to do. Their limited resources will be expanded. In either case, competition will increase, as both candidates will have the resources to communicate to voters that, under the current system, often only incumbents have.

Increased Accountability

This legislation, by requiring Senate candidates to raise 60 percent of their campaign contributions from constituents within their State, restores a balance between a candidate's electoral constituency and his or her financial constituency. Theories of representation argue that a Senator's most important constituency should be his or her electoral constituency—the men and women who voted him or her into office. However, the nationalization of campaign finance in congressional elections has meant that Senate candidates raise substantial sums of money outside their States. During one period in the 1980's eight Senators raised more than 90 percent of their campaign contributions outside their State. By restricting the amount of money a Senate candidate can raise outside the State to 40 percent of the State spending limit, this legislation recognizes the importance of a Senate candidate raising the majority of his or her money from his electoral constituency. By not requiring more than 60 percent of campaign funds to be raised in-State, the legislation recognizes the existence of constituencies outside the State.

Finally, I would like to address the ban on soft money in Federal elections. When I give talks on campaign finance, no matter who the audience, the most incomprehensible part of the current campaign finance system is the distinction

between hard money and soft money. People in both this country and other countries do not understand why there are contribution limits for some activities but not others. That an individual can contribute \$20,000 to a political party in hard dollars, yet can contribute unlimited amounts in soft money, seems to most Americans to undermine the existence of contribution limits. I commend the cosponsors of this legislation for requiring all contributions to political parties for Federal offices to fall under the contribution limits of the FECA.

Implementation

I would like to conclude my testimony by speaking briefly to the question of implementation of this legislation. This legislation, as I think it should, establishes a contingency provision for elections in which one candidate complies with the spending limits but the other candidate does not. Once the noncomplying candidate raises or spends in excess of 10 percent of the spending limit in a State the complying candidate's expenditure limit increases by 20 percent. Monitoring of compliance and noncompliance is to be done by the Federal Election Commission. I would urge you to make sure that the FEC will have the resources to monitor compliance and to react to noncompliance in a timely fashion. If, late in the election cycle, one candidate in a race violates the spending limits, it will be imperative that the FEC be able to know a violation has occurred and inform the complying candidate that his or her spending limit has been raised. If spending limits can be exceeded late in the campaign, and the contingency limits cannot be implemented in time to impact the election, the integrity of this legislation, in my opinion, will be seriously undermined.

Thank you for the opportunity to share my views on this bill with you.

Senator MCCONNELL. Thank you, Professor Nelson. Professor BeVier?

TESTIMONY OF LILLIAN R. BEVIER, DOHERTY CHARITABLE FOUNDATION PROFESSOR OF LAW, ELIZABETH D. AND RICHARD M. MERRILL RESEARCH PROFESSOR, UNIVERSITY OF VIRGINIA LAW SCHOOL, CHARLOTTESVILLE, VA

Ms. BEVIER. I appreciate the opportunity to come before you today. I am going to start out my remarks by commenting on two issues. One is the issue of "free" television time and "free" postage, and I would just like for the record to make it clear that to talk about that being "free" is a mischaracterization. Those things are not free. It may be that the candidate won't have to pay, but somebody will. The costs will just be hidden. I think that is unfortunate. It is not a question of reducing, then, the amount of resources going to campaigning. It is just another way of hiding the resources and making somebody else pay for them—somebody other than the candidate or the candidate's supporters.

Second, I would like to take issue with one comment that Professor Schauer made with respect to the constitutionality of the "voluntary" spending limits. I think if you read that excerpt that he quoted from *Buckley* with a little more care, what you will discover is that the spending limits that were sustained in that case were sustained in exchange for accepting Federal money. In other words, the public was going directly and explicitly to finance you, if you agreed to limit your own spending.

You have no constitutional right to have your election campaign financed by public money, and thus to say, as the Court said in *Buckley*, that the Government may give you this money to campaign on condition of your surrendering another way of campaigning, is not the same as saying that the Government may require you to sacrifice a *constitutional right* in exchange for doing something that the Government wants you to do.

To accept the expenditure limits in the proposed bills, however, would in fact require you to surrender what the Court has said is a constitutional right, which is the right to spend as much as you choose on your campaign. That is not the same thing as a "right" to receive Federal money for your campaign. So I think that the analogy between what is going on in McCain-Feingold and what was sustained in the *Buckley* case is far from being precise, and, indeed, I don't even think it is—

Senator MCCONNELL. Professor, would you yield on that point? In fact, what the legislation really creates is a system where you are punished for expressing yourself beyond the Government-prescribed amount.

Ms. BEVIER. Oh, absolutely. It is not just that you have to give something up. It is that the other person gets quite a bit more, and you, indeed, suffer considerably.

Let me just continue with my prepared remarks, or at least raise some of the themes that I had intended to talk about. It was my understanding that the reason I was invited here was not so much to talk about the First Amendment or to offer particular comments on particular pieces of legislation, but, rather, to offer some views on just in general my thoughts about the basic issue of campaign finance reform.

To give you my thoughts, for what they are worth, on the—

The CHAIRMAN. They are worth a lot.

Ms. BEVIER. Well, but not in this—you don't want to pay me for them, though, of course.

The CHAIRMAN. No, no.

[Laughter.]

The CHAIRMAN. But the American public will be grateful.

Ms. BEVIER. Well, thank you, Senator Warner.

The CHAIRMAN. Very grateful.

Ms. BEVIER. I appreciate that.

The CHAIRMAN. We have different views on how troubled they are, but certainly I know it is an issue that needs to be addressed at some level and in some forum.

Ms. BEVIER. Okay. Well, I appreciate the opportunity to come and share these thoughts with you.

What I would like to do is give you, first of all, my very strong impression that the bills you are presently considering, the McCain-Feingold bill in particular, while it is perhaps well intentioned, would, if enacted, utterly transform our political system. And I think that is one reason why what we feel in the background of this legislation is the looming presence of the

Constitution. The "reforms" that this bill would effectuate would, in fact, convert our political system from one in which political freedom and citizen participation are highly valued and, in fact, taken somewhat for granted, and Government regulation of the political process is, we hope, the exception. It would convert that system to a system in which political freedom will have been almost recklessly compromised on the altar of a kind of reform agenda that seems to me, anyway, as I look at the way these things are likely to play out, not likely to achieve its announced purposes, but that almost equally certainly will entrench incumbent officer holders and reduce the amount of political activity, at the same time that it will significantly—and I mean very significantly—increase the amount of Government regulation of the political process.

In fact, what it seems to me that we would do if these reforms are enacted is go from what I understand to be what the Constitution requires, namely, a democratically controlled government, to a government-controlled democracy, which in my view is kind of a contradiction in terms.

I have devoted considerable scholarly attention to the constitutional issues here, and the most difficult challenge that the subject has presented to me has been the challenge of reconciling the idea of Government regulation of campaign finance with what I view as a deep and important First Amendment tradition, and it is a tradition that is very deep within the American soul, of freedom of speech, of freedom of association, and of freedom of political participation in general.

I am very skeptical that you can reconcile these two notions. And if I were in your shoes and were asked to vote on campaign finance reform, I would want to be certain that I understood exactly what the problem is that the legislation is designed to solve and whether or not its provisions genuinely seem likely to achieve its intended effects.

There is an awful lot of fine-tuning that was suggested here today—we will tinker here, and we will tinker there, and we will tinker at the other place, along with the major reforms. And what I would want to know is that someone has not only figured out that those tinkering were going to work as intended, but I would want to know what the costs of these reforms are going to be, not merely in terms of dollars spent either by candidates or by the TV networks or by the Postal Service, but also in terms of the general political freedom that we all enjoy and of the particular freedom that we now have to speak on political issues and to associate with like-minded persons and to pool our support for our political beliefs, and thus amplify our individual voices.

To know these things, I would have to know not only what the proposals actually say and what complying with their provisions would entail for those whose behavior would be directly affected, but also I would have to be able to predict what

would be likely to happen to the political energies of all those people whose campaign activities the act seeks to regulate, for campaign finance regulation can only redirect political energy and change the way it manifests itself. I think this point has been made in a variety of ways this morning. It can't eliminate the urge to acquire political influence, nor so long as Government is involved, as it seems to be, in as many facets of our lives as it is could we ever expect the players in this political game just to fold their tents and go away, no matter how draconian a campaign finance regulation we were to enact.

The stakes are quite simply too high, and their height is a function not of the cost of campaigning, but of the size and activity of Government.

The Supreme Court has said that campaign finance reform may concern itself with corruption. Indeed, corruption is the only evil that can be constitutionally regulated. The bogeyman of all of our political nightmares is the *quid pro quo*, the Senators' and representatives' votes being bought and sold. But it doesn't seem to be concern with that straightforward *quid pro quo* that drives the campaign finance reform movement.

I think it is more a concern to somehow reduce the cost of campaigning, to prevent the acquisition of undue influence by big givers—whatever is meant by “undue influence”—to reduce the domination of politics by special interests, and more generally to be seen to be somehow purifying the process.

One well-known academic commentator, Cass Sunstein, with whose work I am fairly certain at least many of you are familiar, has said that “[m]any people think that the present system of campaign financing distorts the system of free expression, by allowing people with wealth to drown out people without it...[C]ampaign finance laws might be thought to promote the purpose of the system of free expression, which is to ensure a well-functioning deliberative process among political equals.”

But for all the rhetorical flourish of such assertions, they in my mind raise far more questions than they answer. For example, what is the “system of free expression” that the present system “distorts”? Is it an actual system, or is it merely an aspiration, some sort of vague ideal? How “rich” are “people with wealth”? How “poor” are “people without it”? Is a “well-functioning deliberative process” one in which people are entitled, in fact, to disagree with the received wisdom of the moment, and to pool their resources so as to make their protests more audible to the powers that be? What does it mean to be a “political equal,” aside from one person, one vote?

If being a “political equal” means that one cannot legitimately attempt to acquire or to exercise political influence, what reason would there be to engage in political deliberation? Assuming there is a reason, and even assuming that one would wish to be an effective political deliberator, at what point would

effective participation in political debate become transformed into "undue influence"?

On the other hand, if everyone had "the same" amount of political influence, would not the very concept of "political influence" become oxymoronic? And if we could actually manage to enact legislation that would, in fact, "ensure a well-functioning deliberative process among political equals," what would be the cost to the political freedoms that we now enjoy?

I am pessimistic about finding satisfactory answers to questions such as these. But even more, I am pessimistic about the prospects for genuine campaign finance reform unless answers to these and similar questions are, indeed, found. The reason for my pessimism is that the history of campaign finance reform in action has been a sorry one, and I will not recount it, but I think you are all probably familiar with some of the more salient effects of the 1974 campaign finance law, which was widely hailed as being an effective means of increasing the ability of individual citizens, starting at the local level, to effect national political outcomes. Instead of that happy result, though, what, in fact, happened was that Washington-based special interest groups whose contribution limits were higher than those permitted to individuals came increasingly to dominate the political scene.

In addition, a perverse consequence of the 1974 act was that because the contribution limits made it harder than it had been before for challengers to raise money for their campaigns, it ended up being a piece of incumbent protection legislation. I am sure you don't hate that result, but it can't be seen to be, in my view, one that the public would necessarily regard as benign.

My conclusion is that 20 years of experience with the Federal Election Campaign Act of 1974, which was the most ambitious campaign finance reform effort in our history, has not put us ahead of the game. Indeed, and in my view, because it made it harder rather than easier for candidates to raise money from those who wanted to support them, we have fallen behind in our efforts to make our politics more accessible, more open, more honest. Politics seems to many people now to be kind of a rich person's game; those without large personal resources have to spend a lot of time fundraising, which, whatever the reality, does make it seem as though they are kowtowing to the special interests. People who would challenge an incumbent start with a substantial fundraising disadvantage; thus, fewer challenges are mounted than would otherwise be.

I find myself now convinced that the only way to really reform our system of campaign finance is to enact a radically simple solution, and I think I am directed in this suggestion by what the First Amendment says, that Congress shall make no law abridging freedom of speech. I would say that what Congress ought to do—and I realize this is something completely different

from the ideas you have been hearing this morning—is simply to enact a system that would permit unlimited contributions and require full disclosure.

Permitting unlimited contributions would make it easier rather than harder for everyone to raise campaign money. To my mind, that should always be the goal, and providing full disclosure would create a way for citizens to monitor the influences being exerted on their representatives in Washington.

Finally, simplified rules would eliminate the need for what has already become—and if the reforms under consideration are enacted will become even more profound—an elaborate and quite bureaucratic system of government oversight of political campaigns. To my mind, each of these consequences would be unequivocally benign.

Thank you.

[The prepared statement of Ms. BeVier follows:]

PREPARED STATEMENT OF PROFESSOR LILLIAN R. BEVIER, UNIVERSITY OF VIRGINIA, CHARLOTTESVILLE, VA

I understand that it is not the purpose of this particular part of the Hearing to receive comments on particular provisions of pending campaign reform legislation. Instead, we have been asked to share with you our thoughts about what kinds of questions you would do well to ask yourselves as you consider whether to support any of the pending proposals—or others that might come before you in the future.

I have devoted considerable scholarly attention to the topic of campaign finance reform. I have written two law review articles addressing the first amendment implications of reform. In preparing those articles as well as in teaching many many constitutional law classes at the University of Virginia Law School, I have tried very hard on many occasions to think the subject through.

If I were in your shoes and asked to vote on campaign finance reform, I would want to be certain that I understood “what exactly is the problem that the legislation is designed to solve, and are its provisions genuinely likely to achieve its intended effects?” Also I would want to know that someone had calculated what the costs of the reforms would be, in terms of the general political freedoms we all enjoy and of the particular freedom that we each have now to associate with like-minded persons—to pool our support for our political beliefs and thus to amplify our individual voices. To know these things, I would have to know not only what any proposal actually says, and what complying with its provisions would entail for persons whose behavior would be directly affected by it; but also I would have to be able to predict what would be likely to happen to the political energies of those whose campaign activities the act sought to regulate. For campaign finance regulation can only redirect political energy, and change the ways it manifests itself. It cannot eliminate the urge to acquire political influence, nor so long as government is involved in as many facets of our lives as it presently is could we ever expect the players in today’s political game just to fold their tents and go away—no matter how draconian a campaign finance reform measure is enacted. The stakes are, quite simply, too high; and their height is, quite simply, a function of the size of government and not of the cost of campaigning.

The Supreme Court has said that, where campaign finance reform is concerned, corruption is the evil to be feared—and that corruption is the only evil that can be constitutionally regulated. Indeed, the boogey man of all of our political nightmares is, appropriately, the possibility that the votes of our Senators and Representatives on issues of genuine and deep significance to the nation would somehow be “for sale” to the highest bidder. But I think it is not concern with straightforward quid-pro-quo contributions-for-votes that drives the present

campaign finance reform movement. I think it is more a concern to prevent the acquisition of "undue influence" by big givers, to reduce the domination of politics by "special interests," and in general to "purify" the process.

One well-known academic commentator has noted that "[m]any people think that the present system of campaign financing distorts the system of free expression, by allowing people with wealth to drown out people without it. . . . [C]ampaign finance laws might be thought to promote the purpose of the system of free expression, which is to ensure a well-functioning deliberative process among political equals." But, for all the rhetorical flourish of such assertions, they raise more questions than they answer—important questions that no reform proponent with whose work I am familiar has even addressed. For example, what is the "system of free expression" that the present system of campaign financing "distorts"? Is it an actual system, or is it merely an aspiration, a vague ideal? How "rich" are "people with wealth"? How "poor" are "people without it"? Is a "well-functioning deliberative process" one in which people are entitled to disagree with the received wisdom of the moment, and to pool their resources so as to make their protests more audible to the powers that be? What does it mean to be a "political equal"? If being a "political equal" means that one cannot legitimately attempt to acquire or exercise political influence, what reason would there be to engage in political deliberation? Assuming there is a reason, and even assuming that one would wish to be an effective political deliberator, at what point would effective participation in political debate become transformed into "undue influence"? On the other hand, if everyone had "the same" amount of political influence, would not the very concept of "political influence" itself be oxymoronic? And if we could actually manage to enact legislation that would in fact "ensure a well functioning deliberative process among political equals," what would be the cost to the political freedoms that we now enjoy?

I am very pessimistic about finding satisfactory answers to questions such as these. But even more am I pessimistic about the prospects for campaign reform unless answers to these questions can be found. The reason for my pessimism is that the history of campaign finance reform efforts in this country teaches us that genuine reform is, to put it mildly, an elusive goal. I mean no disrespect to the good faith efforts of the members of the United States Congress who have attempted the task, but at the same time I cannot help but notice that so far their efforts have failed. In fact, beginning with the Corrupt Practices Acts of 1907 and 1925, and continuing through the 1973 Federal Election Campaign Act, the story of legislatively enacted federal campaign reform has been a rather sorry one of disappointed hopes, failed goals and perverse unintended consequences. Just one salient example will have to suffice for today to bear out this rather sweeping indictment: The 1973 FECA reforms in general—and the individual contribution limitations in particular—were widely hailed as effective means to increase the ability of *individual citizens*, starting at the local level, to affect national political outcomes. Instead of that happy result, though, what in fact happened was that Washington-based special interest political action committees came increasingly to dominate the political scene. This is because they had such a significant comparative advantage at overcoming the difficulties of raising adequate funds through small contributions from large numbers of people. In addition, a perverse consequence of the 1973 Act was that, because it made it harder for challengers to raise money for their campaigns, it ended up being a piece of "incumbent protection" legislation.

My conclusion is that 20 years of experience with the FECA of 1973—which was the most ambitious campaign finance reform effort in our history—has not put us ahead of the game. Indeed, and in my view because it made it harder rather than easier for candidates to raise money from those who wanted to support them, we have fallen behind in our efforts to make our politics more accessible, more open, more honest. Politics is now a rich person's game; those without large personal resources must spend much of their time fundraising, which whatever the reality makes them seem as though they are kow-towing to the special interests; those who would challenge an incumbent start with a substantial fundraising disadvantage, thus fewer challenges are mounted than would otherwise be. I find myself now convinced that the only way really to reform our

system of campaign finance is to enact a radically simple system: permit unlimited contributions, require full disclosure. Permitting unlimited contributions would make it easier rather than harder to raise campaign money; providing full disclosure would create a way for citizens to monitor the influences being exerted on their representatives in Washington; and simplified rules would eliminate the need for what has become an elaborate and quite bureaucratic system of government oversight of the campaign process. Each of these consequences would, in my view, be unequivocally benign.

The CHAIRMAN. Thank you very much.

Would you like to lead off, Senator?

Senator MCCONNELL. Just two observations, and I guess a question for Professor BeVier.

I gather you share my view that McCain-Feingold, in all of its major elements, is wholly inconsistent with the Constitution. Is that your view?

Ms. BEVIER. Yes, I think it is, both doctrinally and in spirit.

Senator MCCONNELL. Secondly, assuming we were to be so unwise as to enact this into law, would you agree that this would be the most substantial grant of authority to the Government to regulate political speech in our history?

Ms. BEVIER. Well, I don't know of one that comes even close to what this bill seems to imagine.

Senator MCCONNELL. Because as a practical matter, if you assign a speech limit—and the Supreme Court has been perfectly clear that spending is speech—if you assign a Government-specified amount of speech to 435 House races and 100 Senate races, you would have to have a Federal Election Commission, as I said earlier, roughly akin to the size of the Veterans' Administration to try to enforce all of those speech regulations throughout the country, would you not?

Ms. BEVIER. Well, I heard last week somebody say that it would take a building the size of the Pentagon to house all the people that would have to try to administer the act. So maybe that is even bigger than you thought, yes.

Senator MCCONNELL. Has the Government ever in our history—I went to law school, but I don't think of myself as much of a lawyer. I am trying to think of any situation in our history where the Government has on such a massive scale tried to regulate speech of any kind, much less political speech. Has there been anything proposed like this?

Ms. BEVIER. Gosh. Not that I know of. I mean, I suppose people might—you know, the sort of whipping boy of all bad Government with respect to speech is the McCarthy era, and perhaps after World War I, there were some laws passed, but nothing on this scale, Senator. And if I might suggest, what it suggests to me in my more cynical moments is that, in fact, many of the sponsors of this bill do not expect it to pass constitutional muster, and it is an act of sheer—as Senator Warner suggested, for some an act of sheer political opportunism: Look, we have taken care of the problem. And then the Supreme Court will come

and kind of undo the damage, which I find almost worse than the idea that they actually think it might work.

Senator MCCONNELL. Finally, it is wholly impermissible, is it not, to try to quantify speech and dole it out in equal amounts, to say, in effect—the Government, in effect, saying, Professor BeVier, you can only speak this much, and, Professor Nelson, you can only speak this much; and if you speak excessively, something bad is going to happen to you. You are going to get punished, fined, or something. That is wholly impermissible under the First Amendment, is it not?

Ms. BEVIER. Yes, but you couldn't do it for law professors. It would be impossible.

Senator MCCONNELL. Thank you very much, Mr. Chairman.

The CHAIRMAN. Professor Nelson, would you like to give your perspective on those important questions?

Ms. NELSON. Well, I am not a constitutional lawyer, so I will defer the constitutionality to my colleagues here, who seem to have some disagreement on this issue. I am sorry Professor Schauer couldn't stay to weigh in on this issue. But *Buckley v. Valeo* has said that we can have spending limits if they are tied to public funding. Now, whether we want to call subsidies public funding or not, this legislation presumes that they are.

Senator MCCONNELL. But they had to be purely voluntary?

Ms. NELSON. Yes.

Senator MCCONNELL. There were no punitive aspects to the Presidential system. In other words, if you decide to do what John Connally did or what Steve Forbes did, you don't get punished. It costs you a lot of money, but nothing bad happens to you. Your cost of TV time doesn't go up—there are no punitive features.

Ms. NELSON. That is correct, and that is something that I think would have to be tried—weighed out in the courts. I don't think—and I think that is an issue that would be disputed and would be finally decided by the courts. But I don't think that was put in there by the authors of this bill and the cosponsors of this bill as seen—I don't think they saw it as unconstitutional. I think the ban on PAC's is a much more difficult question, and as Professor Schauer said, I think most people think that that probably is unconstitutional because of the free speech and right to assembly issues that that raises.

The CHAIRMAN. I would like to pick up on a theme that I continue to work on, and I think you have answered it, Professor BeVier, and that is, I just don't want to see the Congress pass something which is recognized by constitutional experts across the country as not likely to survive the Federal court test. Realistically, if we were to get to some consideration in the Senate or House in 60 days, which I think is highly improbable, but get it through here to the President for signature, then the court suits would start probably before this election. I doubt if there would be any disposition, except maybe in a Federal

district court, before the election. We are looking at about an 18-month process—wouldn't that be correct?—to get to the Supreme Court, Professor BeVier. Minimum.

Ms. BEVIER. Oh, at least. That is right.

The CHAIRMAN. Which means that then it comes up on the eve of the following election in 1998. Of course, at some point the courts have got to deal with it. But I am just wondering if—do you agree with let's not encourage the Congress to pass something which we knowingly on its face know to be unconstitutional?

Ms. NELSON. I agree with that, but I also would not encourage the Congress to say, well, we don't know if this is constitutional or not, so let's not do anything.

The CHAIRMAN. Well, that is the other side, yes.

Ms. NELSON. That is the weighing that has to take place.

The CHAIRMAN. But, fortunately, this committee has had the views of a number of distinguished scholars, and I am trying to figure out if there is any way to broaden that debate. Despite what Mr. Ford says, I want to get the widest possible views I can on this question of constitutionality, and I will press on on that question.

Let me go just to the television, which is currently the hot topic out here, and the statements now that the national networks are beginning to look at possible donations of time to the Presidential. I am concerned about all—let's call it trickle down, all the way down to the sheriff's race. As prosaic as that question may be, I just know from experiencing a lot of politics in my State over a number of years, they are very concerned down at the local level about their races just as much as who is President of the United States as who is their United States Senator.

What would be your views, Professor Nelson, on that television question?

Ms. NELSON. Well, as you know, in your State, as in many other States, the campaign finance laws that apply at the State level are different than the campaign finance laws that apply at the Federal level. And I think that would be the same situation here. The broadcast rates that would apply to the Federal level would not necessarily have to be those that would apply at the State level. And I think what Professor Ornstein said earlier makes sense, that the responsibility of the United States Senate is to pass campaign finance laws that apply to Senate elections or House elections or Presidential elections, and not those that apply to local races.

Senator MCCONNELL. The chairman asked me to just interject briefly. You know, the current broadcast discount that we are entitled applies to all races, both local and Federal. You knew that?

Ms. NELSON. Right. But the problem with that rate is that it is often not effective for particularly Federal candidates because

the ads can be pre-empted. So you end up having to buy time at higher rates.

Senator MCCONNELL. Oh, I understand that. I understand that. But, the reason that law was crafted the way it was is because, as a practical matter, Congress couldn't deny this alleged discount to all of the races, and that is the reason it was crafted that way.

The CHAIRMAN. Professor BeVier, on the question of television and the application under the doctrine of equity between the President and the sheriff, wherein does the decision fall, in your judgment?

Ms. BEVIER. Well, I am sort of inclined to think that the practical judgment is yours and should start at the top and go all the way down. You should try to do it kind of all at once. I think probably you are going to have to. But I would sort of phrase the question, again, slightly differently.

The CHAIRMAN. Sure. Go ahead.

Ms. BEVIER. Is this a public subsidy? Is that what you mean it to be? If it is, I think that the taxpayers should pay for it. I do not think that we should be saying this is public funding through one side of our mouth and then on the other side of the mouth say it is free and the broadcasters are going to pay for it, because they have been given this—

The CHAIRMAN. Well, nothing in life is free.

Ms. BEVIER. Well, that is right, and I just think that that aspect of this is rather troubling.

You know, what I also have a problem with is this idea that if you accept the expenditure limitations you have some—as I understand it there are some requirements on what kinds of ads you can have. It has to be 30 seconds or more and—so that not only are we trying to—the kinds of controls that we are trying to place on what people do and the quality controls. I mean, we might not like political campaigning. We may dislike negative ads. But I think that, in fact, whether we like it or not, the Constitution says that we can all try to win the votes of the people in the way that seems best both to them and to us.

Ms. NELSON. If I could just weigh in on that, that just would apply to the free time that is available. The discounted rates could be spent for—there would not be those restrictions on what kinds of spots you could run and how long they could be. And I think that is the more important part of the broadcast part of this legislation, the discounted rates rather than the free time.

The CHAIRMAN. I may desire to ask further questions, but I would submit them to you, and I would hope that you would find the opportunity to respond.

Ms. NELSON. I would be happy to—

Senator MCCONNELL. One final minute?

The CHAIRMAN. Yes.

Senator MCCONNELL. In fact, Professor BeVier, you are correct. This bill is loaded with subsidies. It is not just the

broadcast subsidy. There is also a direct mail subsidy, which will, of course, be paid for either by the taxpayers or the ratepayers.

The CHAIRMAN. Well, aren't they the same, taxpayers and ratepayers?

Senator MCCONNELL. Same folks. So even though there is a sort of sleight of hand in here to try to argue that somehow there is not taxpayer funding here, because that has been kind of a radioactive issue, it is still there. It is just assessed in a different way.

Ms. BEVIER. Off budget.

Senator MCCONNELL. Thank you very much.

The CHAIRMAN. Thank you very much. This has been a very good morning, and your panel has made a very substantial contribution. I thank each of you.

[Whereupon, at 12:04 p.m., the committee was adjourned.]

CAMPAIGN FINANCE REFORM

WEDNESDAY, MAY 15, 1996

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 10:07 a.m., in Room SR-301, Russell Senate Office Building, Hon. John Warner, chairman, presiding.

Present: Senators Warner, McConnell, Ford, and Pell.

Staff Present: Grayson Winterling, Staff Director; Bruce E. Kasold, Chief Counsel; Edward H. Edens IV, Special Assistant to the Chairman; Virginia C. Sandahl, Chief Clerk; Mary Louise Faunce, Administrative Assistant to the Staff Director; Kennie L. Gill, Democratic Staff Director and Chief Counsel; and John L. Sousa, Democratic General Counsel.

The CHAIRMAN. The committee will come to order.

Today the committee is holding its sixth hearing this year on campaign finance reform, and it is interesting. This series of hearings has been designed to permit the examination and full discussion of this very important subject, and it is the most comprehensive set of hearings held by this committee or any other committee here on the Senate side since 1991. Those who have been following these hearings know that our witnesses have, indeed, covered the widest possible range of issues and presented a broad spectrum of views on the type of reform that would be most beneficial.

We have, for example, heard from several Senators—McCain, Feingold, Thompson, Wellstone, Feinstein, and Bradley—about legislation they have proposed, as well as from Members of the House who testified on legislation they introduced in the House.

Distinguished attorneys have also come before the committee raising serious concerns about the constitutionality of some of the proposed reforms. And we heard pros and cons for various aspects of campaign finance reform from prestigious policy institutes such as the Cato, the Rockefeller, Brookings, American Enterprise Institute, and the Heritage Foundation. And independent scholars have also added their views, as well as many calls for significant reform by several advocate groups.

Organizations and citizens have also testified about the impact of campaign finance reform on proposals that would eliminate, for example, political action committees and the bundling of funds, an impact that could hinder the ability of average citizens to join together in support of a common cause. And some witnesses have spoken strongly about the unfairness of permitting organizations with mandatory membership to use membership dues to conduct partisan political activities.

In the course of these hearings, we also learned about the costs and management problems associated with the proposal that candidates for election be given reduced-fee postage mailing, U.S. mail. Implementing this proposal would necessarily mean increased mailing costs for the American postal user, and any discussion of this issue should address head on the fact that postal users will be required to pay for the campaign of someone they may or may not want to support.

During the hearings, several panels of experts presented some thought-provoking ideas that should be considered in any campaign reform evaluation, such as increasing the limits on contributions to facilitate the raising of funds, limits which have not been raised in over 20 years. We also heard from the Chairmen of the Republican and Democratic National Committees about the very important role of the political parties in campaigns and the fact some of the proposed reforms would weaken their role, an action we should take, if at all, with the utmost of caution.

Our hearings to date have been very thorough and, in my judgment, quite necessary. It is a review of this very important subject that is essential to such future debate as the Senate may or may not have on this issue.

As I noted, the last comprehensive review within this committee occurred 5 years ago. Across our Nation today, the way we elect our representatives provides citizens with the ultimate freedom—freedom found in far too few countries today. The way we finance our campaigns is a central element in our election process; therefore, the subject of campaign finance reform warrants this comprehensive view, in my judgment.

All of the testimony received at these hearings will be made available to the full Senate. It is my expectation that they will find the committee's efforts to be helpful and complete.

Now, turning to today's hearing, the committee will be receiving testimony about the free and reduced-fee broadcast provisions of some of the proposed campaign finance reform bills. Our first panel consists of members from the broadcast industry who will testify on the impact of this legislation on their particular business.

In the second panel, we will hear from several witnesses who will share their analysis and judgment on the need for this type of reform, as well as the possible constitutional impediments to such reform.

Throughout the hearings, I have also expressed my own personal view, and that is, it is incumbent upon the Congress not to put together some form of legislation which we have every reason to believe will be struck down by the Federal courts because of constitutional infirmities. I think that would be just misleading to our own colleagues and misleading to the American public if we were to move ahead on such a piece of legislation.

Now, today, while we will deal tangentially with the constitutional aspects, this is something this Senator will focus on very, very carefully, because I do not want to be a party to a piece of legislation which is let's just get it out of the Congress and throw it into the Federal courts and let this issue be resolved there. I think to the extent we put together a bill, act on it on the Senate floor, it must be based on our best judgment that it is likely to be able to survive the constitutional test in the other branch of Government, the Federal judiciary.

My distinguished ranking member.

Senator FORD. Thank you, Mr. Chairman.

As you stated, this is the sixth hearing of our committee on campaign finance reform. I stated my belief at the hearing last week that it is time, after this hearing, to start moving a proposal. As I have stated to you privately and publicly, I stand ready to work with you, Mr. Chairman, to get a proposal to the full Senate for debate.

Our chairman has been very clear at each hearing in laying out his bottom line for reform, and he has just done that; that is, that Congress not pass legislation which we know cannot pass constitutional review. And I want him to know and you to know that I concur in that objective.

I would also respectfully submit to the committee that the pre-eminent constitutional scholars on this issue are divided, and our constitutional experts today I believe are similarly divided.

Mr. Chairman, I regret that I was not able to return for the testimony of our second panel last week, but on review their testimony, I was especially impressed with the testimony of Professor Schauer, who specializes in the First Amendment. He presented a strong argument that the voluntary spending limit and broadcast incentive provisions of the McCain-Feingold bill are constitutional under existing case law. And I believe he is the second law professor to so testify.

While other law professors have given their opinions on the constitutionality of this bill, most were also arguing their point of view on the merits of the bill. Professor Schauer made it clear in his statement that he has no particular views about the merits of the bill. His political affiliation is independent. He has no political, financial, or fiduciary connections with anyone who might be helped or hurt by the passage, and to maintain academic independence, he does not represent clients or enter

into consulting relationships. In short, he has no axe to grind, no cause to advance or defend. He told it like he saw it, and he told us what the case law is, not what it ought to be.

And so, Mr. Chairman, we need to push on and mark up a measure that we believe can pass constitutional muster and send it to the full Senate to consider and to work its will. And I think it is unusual—or maybe it is just coincidence—that FCC has asked all the major corporations, I understand, to send their proposals and what they would like to do and what their offers have been to the FCC by June 3, I believe, and then the FCC will hold a hearing. One issue for the FCC is whether programming that broadcasters deemed to be bona fide news should be exempt irregardless of the format.

So I stand ready to work with you, Mr. Chairman, in whatever is necessary to meet your goals and to give the Senate the opportunity to work its will, and I thank you, sir.

The CHAIRMAN. Senator Ford, I thank you. We have some differences, but you have been absolutely cooperative throughout these hearings. And I recognize from your perspective the desire to move on for a markup, but as yet, I have not reached the conclusion that we are there. But—

Senator FORD. And you are in control, Mr. Chairman. I recognize that.

The CHAIRMAN. Now I would like to introduce in some detail the very distinguished panel we have before us this morning.

Gregory M. Schmidt is Vice President, New Development, and General counsel for the LIN Television Company. Mr. Schmidt is responsible for assuring station compliance with the political broadcast news—excuse me, laws. I wish it were the news, but, anyway, it is the laws. Mr. Schmidt has spent 15 years advising broadcasters with respect to the political broadcast laws and issues. Before joining LIN, he was a partner in the law firm of Covington & Burling where he represented many broadcasters and trade associations.

Now, Al Bramstedt, a lifelong Alaskan, born in Fairbanks, growing up in a broadcast family, he began his career in radio and television at the KENI-AM and TV. In 1981, he became the general manager of KTUU-TV, a position he still holds today. His professional organization involvements include chairman of the Anchorage Broadcast Television Consortium, UAA Journalism and Public Communications Council. In 1992, he was inducted in the Alaska Broadcasters Hall of Fame and was also Alaska Broadcasters Association Broadcaster of the Year in 1987.

Now, Jan Crawford, President of Jan Crawford Communications, has 26 years in the media consulting field and is one of five women serving on the Board of Directors of the American Association of Political Consultants. Jan Crawford Communications is the only media consulting firm headed by a woman, which specializes in television, radio, cable, strategic planning, and placement for Democratic candidates and

progressive issues to specific clients nationwide. She has bought and placed advertising for scores of congressional, senatorial, gubernatorial, and Presidential campaigns and numerous local candidates.

Now, Mr. Schmidt, would you kindly lead off?

TESTIMONY OF A PANEL CONSISTING OF GREGORY M. SCHMIDT, VICE PRESIDENT, LIN TELEVISION CORPORATION, WASHINGTON, DC; JAN CRAWFORD, JAN CRAWFORD COMMUNICATIONS, PARIS, VA; AND AL BRAMSTEDT, JR., GENERAL MANAGER, KTUU-TV, ANCHORAGE, AK

Mr. SCHMIDT. Thank you, Mr. Chairman. We very much appreciate the opportunity to appear before you this morning. LIN Television owns or operates 14 television stations around the country, including WAVY-TV in Norfolk, Virginia.

I would like first to address two fundamental misconceptions as to the nature of the problem which appears to be driving S. 1219 and similar measures. The first is that advertising is the major cost of most campaigns. To the contrary, recent studies of FEC records show that in the typical Senate race in 1992, only about 40 percent of the money spent went for radio and TV advertising. In the average House race, that figure fell to 25 percent.

What does the rest pay for? Other media, fund-raising, campaign overhead costs, and, of course, consultants—consultants who advise the candidates on the use of television and other media and who in many cases are paid in the form of commissions directly tied to how much the candidates spend. None of these items is covered in S. 1219. Only broadcasters are targeted.

Another myth is that somehow candidates do not already have numerous opportunities to appear on local stations. Here, again, the reality is that LIN stations and most local stations, particularly strong news stations, provide extensive exposure to candidates, particularly Federal candidates, in their news, public affairs programming, and, of course, through paid advertising.

At WAVY, the congressional races are covered on our five daily local newscasts nearly every day, with special contact 10- and campaign watch 5-minute segments throughout the pre-election period. House and Senate candidates are offered 15-minute segments on the station's "Weekly Bottom Line" public affairs program, and candidate debates are regularly produced in conjunction with the League of Women Voters and the local public station.

Similar commitment is reflected by our station in Dallas where we produce and carry nine half-hour programs in the 9 weeks prior to the general election, to be aired in the prized slot

immediately following NBC's "Meet the Press." Each half-hour show will be devoted to one of nine congressional races, eight House and one Senate, with each candidate spending half of the show discussing the issues with the reporters.

These efforts are typical of strong local news stations, and the other stations in our market have comparable commitments. If there is a problem here that needs to be addressed, it may be the reluctance of many candidates to take advantage of these opportunities, for our invitations to participate in our programs, particularly candidate forums and debates, are all too frequently rejected.

I would also like to comment on the apparent misconception that the solutions outlined in S. 1219, massive amounts of mandated free time and huge discounts for paid time, will not be significant burdens on local broadcasters. Some numbers:

During a typical week, Station KXAS in Dallas has approximately 225 30-second spots to sell between 6 and 10 p.m. Monday through Friday, and approximately 145 in the station's local evening news shows at 5 and 10 p.m. With a service area encompassing eight congressional districts, which is by no means the worst case in the country, there are 18 House and Senate candidates in the general election who could stake a claim for free time, and each under the law could claim 15 minutes in the final 4 weeks of the campaign. This scenario—a bad scenario, but not the worst you could come up with under the bill—finds 540 of 900 possible commercials being usurped by candidates; or, alternatively, up to 540 of 580 total evening news spots. Even a fraction of those numbers would be a substantial penalty for a company such as LIN with very strong news stations and over 50 percent of its profits from local news.

The potential additional losses from further steep discounting for paid time are outlined in our written testimony, and the totally is unquestionably punitive. It is also counterproductive. These measures would penalize most harshly exactly the kinds of strong local news stations and exactly the kind of programming that Congress and the FCC have repeatedly asserted they wish to see more of.

And there are other down sides. I would fully expect that some portion of the mandated free and paid time would come at the expense of the other public service activities of the stations, including the thousands of free public service announcements we provide to the many charitable and civic organizations in our markets. Political time would be substituted for other PSA time.

I also believe it would come at the expense of State and local candidates. They are already crowded out of the air waves or out of prime viewing times in many markets by Federal candidates in their guaranteed free time and access. This bill would aggravate an already bad situation for State and local candidates.

There is no doubt that the adoption of S. 1219, as I believe you alluded to in your opening remarks, will increase the risk of judicial invalidation of the entire political broadcast scheme. And I am making a more pragmatic observation, and that is, to this point, despite the belief of many that even the current law is no longer constitutional, if it ever was, there has been no attack coming from the industry. Punitive measures such as the provisions of S. 1219 will guarantee a judicial assault and I believe create a substantial likelihood that the entire scheme will fall.

The provisions of this legislation we believe are ineffective, unfair, and unconstitutional, and an effort to have local broadcasters subsidize political campaigns. We urge you to reject mandatory free time and further-rate discounts, and we have proposed a less punitive and less intrusive and as yet untried approach of conditioning the current lowest unit rate discount on acceptance of voluntary spending limits.

Thank you.

[The prepared statement of Mr. Schmidt and Mr. Bramstedt follows:]

PREPARED STATEMENT OF GREG SCHMIDT, LIN TELEVISION CORPORATION, WASHINGTON, DC; AND AL BRAMSTEDT, KTUU-TV, ANCHORAGE, AK

Thank you, Mr. Chairman, for the opportunity to present this statement on behalf of the National Association of Broadcasters (NAB), Greg Schmidt of LIN Television Corporation, and Al Bramstedt, General Manager of KTUU-TV, Anchorage, Alaska. NAB represents the owners and operators of America's radio and television stations, including all major networks. As such, we have a keen interest in this issue.

While campaign reform is focused on such issues as soft money, the role of political action committees, and other topics, it inevitably also deals with the cost of advertising that candidates use as part of their campaigns. Unfortunately, there are a number of misconceptions about that advertising cost that have led some in Congress and elsewhere to blame broadcasters for those costs. In this testimony, we will look at the issue of the role broadcasters play in the political process, and attempt to dispel some of those misconceptions.

The Current System—How It Works

As all of you know, candidates for public office already receive favored treatment when they purchase broadcast time on radio and television stations.

Under the Communications Act, candidates are provided what is known as "lowest unit rates" when they purchase airtime either 45 days prior to a primary election or 60 days prior to a general election. In a nutshell, that means that political candidates are charged the lowest rate that any advertiser paid for that particular class of time during a given period of time in the same week in which the ad was aired.

The theory behind this requirement was to provide candidates with the same rates that a station's best customers pay. Even though candidates are short-term advertisers (buying time only prior to elections), the law provides that they be treated just as a station would treat year-round, high-volume customers. On average, lowest unit rates give candidates about a 30 percent discount below other advertisers.

While interpretations about what the lowest unit rate is can sometimes be complicated to calculate, by and large broadcasters have done a good job of administering this system. And we believe that over the years, it has served candidates well. It gives them a discount for their advertising, while ensuring

that broadcasters—whose only source of income is advertising—receive compensation for their airtime.

However, a number of proposals are being floated in Congress on the theory that even this system is too costly to candidates. Because the amount of money spent on advertising—particularly television advertising—has risen in recent years, many have assumed that the solution to the overall campaign spending issue is to require broadcasters to either provide chunks of free time to candidates and/or to provide additional discounts below lowest unit rate discounts they currently provide.

NAB strongly opposes any such legislation for a variety of reasons, including fairness, the need for adequate compensation, constitutional concerns, and the fact that in most campaigns, advertising is NOT the major portion of the cost of campaigning. Let us explore each of these facets as we look at the proposals being made to address campaign advertising as a part of reform legislation.

Campaign Reform Proposals—Common Threads

There are numerous bills which have been introduced in the 104th Congress to address the campaign “reform” issue. Most notably, this Committee has already held several hearings on S. 1219, introduced by Senators John McCain (R-AZ) and Russ Feingold (D-WI). Similar legislation has been sponsored in the House by Representatives Linda Smith (R-WA) and Chris Shays (R-CT).

But among these and other bills, there is a common assumption—that broadcast advertising is the major cost of campaigns, and that the way to reduce the cost of campaigns is to cut broadcast advertising prices.

One way these bills address the issue is by requiring that stations in a given state provide 30 minutes of free time to each Senate candidate once that candidate has qualified for the general election ballot. Such free time would usually be provided between 6 and 10 p.m. Monday through Friday, and would be usable in segments of from 30 seconds to 5 minutes in length. Minor party candidates could also qualify for free time based on their percentage of votes received in preceding elections, or by gathering sufficient numbers of names on a petition. Such free time would be required on stations located in a Senate candidate’s state and adjacent states, with no station required to provide more than 15 minutes of time to any one candidate.

In addition, the bills require that TV stations provide a 50 percent discount below lowest unit rates for any commercial time bought over and above the free time provided. This additional discount would occur during the 30 days before a primary election and 60 days prior to the general election. Such time also would be non-preemptible, meaning that once a commercial was purchased, the station could not preempt it for a higher-paying advertiser.

The bills also re-define what lowest unit rates means. Under S. 1219, for example, that rate is now defined as the “lowest charge of the station for the same amount of time for the same period on the same date.” Currently, the law uses the same class of time and same time period during that given week on a particular station.

In the case of both free and discounted time, candidates would only enjoy these opportunities if they agreed to the overall campaign spending limits which are laid out in the legislation.

The suggestion that this legislation makes is that broadcast advertising—particularly television advertising—is the root cause of the high cost of campaigns. By providing free time and additional discounts, the legislation assumes that candidates can be co-opted into agreeing to voluntary spending limits.

But these bills and others miss a larger point—that mandated free time and drastic discounts on already discounted time represent an attempt to have broadcasters underwrite the costs of campaigns. We believe that shift in costs to our industry is unfair, unconstitutional, and unwarranted. Let us look at the reasons why.

Campaign Advertising is Only One Aspect of Campaign Costs

We recognize that broadcast time is a significant component of campaign expenses, although not nearly as much as many estimates would have you believe, and certainly not in all races for Congress.

An analysis of FEC records done by the Los Angeles Times following the 1992 elections showed that incumbents in Senate races spent less than 40 percent of their campaign budget on electronic media. Challengers spent a little more, averaging about 44 percent. That analysis also indicated that radio and television advertising accounted for even less of 1992's House races. There, House incumbents expended below 25 percent and challengers below 33 percent of their campaign expenditures on electronic media.¹ We should note that in all instances, these figures include costs for producing the ads as well as the cost of running them, so the actual cost of placing the ads on the air is less than these figures indicate.

As the authors noted, "What then was driving these huge (campaign) outlays? *It most assuredly was not television advertising, which conventional wisdom has long blamed for the skyrocketing cost of campaigns. While the average amount invested by House incumbents in television advertising nearly doubled between 1990 and 1992, those expenditures still represented only 25 percent of their total outlays.*"² (emphasis added).

The fact is that there are many other expenses in campaigning for Congress—direct mail, telephone banks, campaign literature, bumper stickers, travel, postage, staff, consultants, and media time-buyers whose fees are tied to the amount of media purchased in a race. None of these issues (except postage) is dealt with by any of these so-called "reform" bills, yet each is a contributor to the cost of many campaigns.

Who can guarantee that if costs of broadcast time are significantly reduced, then somehow fund-raising will somehow cease to be a concern? Indeed, in a competitive race, candidates will continue to raise as much money as they can and spend as much as they need to win within the limits the law permits. It is entirely likely that any "savings" from broadcast expenses will easily be spent in other ways. If candidates can get TV spots for half-price, nothing suggests that they might not simply buy two times the number of TV spots, thus negating the whole purpose in re-writing lowest unit rate rules.

As The Wall Street Journal noted, "These . . . proposals . . . suffer from an erroneous belief about the power of money. Each...seems to assume that money is the determinate factor in who wins election. . . . (T)his is demonstrably untrue. . . . In 1994, losing Democratic incumbents in House races spent, on average, one-third more than their Republican challengers. . . . (the McCain/Feingold) bill (is) based on several erroneous assumptions about the effects of money in politics, and would have detrimental effects on political equality and electoral competition."³

Such a system also would hit stations unevenly. A 50 percent-discounted spot on a popular prime time program such as "ER" would cost that station much greater revenue loss than a similar spot on a less popular program. Is this a fair system?

At the same time that many candidates are turning more and more to media campaigns, the buying of ad time on TV stations and many radio stations has changed over the years. Instead of using rate cards, those stations now have what could best be described as weekly "auctions" of commercial time. Buyers purchase time with the knowledge that if another advertiser offers more for the same commercial slot, the original spot is "bumped." By offering more for their commercials, buyers try to ensure that their spots will not be preempted.

Oftentimes during campaigns, the problem has been that candidates and their time-buyers often demand and expect fixed spots. A fixed class of time costs more

¹ "Handbook on Campaign Spending: Money in the 1992 Congressional Races," Dwight Morris and Murielle E. Gamache; Congressional Quarterly, Washington, DC, 1994, p.8.

² Ibid. p. 9.

³ "Campaign Finance—Deformed," Bradley A. Smith, The Wall Street Journal, Oct. 6, 1995.

than preemptible time. Therefore, candidates can end up paying more than they need to. However, savvy media buyers will tell you that it is not necessary for candidates to purchase fixed time to ensure that their spots air.

One possible explanation for the rising costs of the campaign process are the high-priced political consultants that most campaigns hire. A good case can be made that it is these consultants who are as responsible as anyone for the increase in campaign spending, particularly for TV advertising. Working on commissions based on how much advertising is bought, these consultants have a built-in incentive to use TV more so that they can increase their own piece of the pie. One noted political observer, Professor Larry Sabato of the University of Virginia, calls this system "a gold mine, an absolute gold mine. . . it's no accident we spend half (sic) of our campaign dollars on media."¹ A former political consultant, Matt Reese, notes that "a person's greed and self-interest get in the way of the campaign."²

In many cases, time-buying becomes a "double hit" for consultants. They urge candidates to buy more time, which increases their commission, and they insist that the spots be fixed, which raises the cost even higher. This, of course, results in a spiraling increase in overall campaign costs because the opponent of the candidate running fixed-spot advertising will feel pressure to keep up with the advertising pace.

Consultants have every monetary incentive *not* to understand the market they buy or to buy "smart." Since they are creating a larger piece of the action for themselves, why buy smart when buying fixed spots on a formula basis lines the wallet even more?

In short, the basic assumption that broadcast advertising is the "devil" in campaign costs is erroneous.

Half-Price Discount Causes Problems for Broadcasters

The provisions which would provide Senate candidates with half-price lowest unit rates are of particular concern. Under the legislation this committee is considering, eligible federal candidates would receive TV spots at a rate half again as low as those charged a station's best year-round customers. And once the spots were purchased and paid for, they could not be preempted by higher-paying commercial customers. Thus, the broadcaster loses not only revenue on the ad itself, but this method of calculating the lowest unit rate lowers the rate on which the discount is figured, meaning an even larger loss of revenue.

The fact is that candidates already receive the rate that a station's best customer pays. To provide an additional discount below that level is clearly punitive to the station. Remember—the 60 days prior to the general election corresponds to the start of the final third of the calendar year, when stations' inventory is already stretched and when stations must reach their business goals in order to maintain profitability.

Allowing candidates to buy spots at 50 percent of the lowest unit rate does not guarantee that less money will spent on TV advertising. Indeed, there is nothing in any of these proposals which limits the number of spots that will air. In a close race, one can easily envision candidates buying twice as many ads for the same amount of money. That would have a double whammy on local stations—first, by reducing the amount of revenue generated, and second, by reducing the amount of available time to sell regular commercial customers. Add to that the crunch that develops with the new fall season and with the upcoming Thanksgiving and Christmas holidays, and you have a serious threat to station's abilities to make their business operate profitably during an election year.

Let's look at some specific data which we extracted from the NAB/BCFM Television Financial Report for 1994, the last election year. This report annually analyzes commercial TV stations regarding their advertising and profitability.

In our analysis, we looked at gross political revenues for average stations in various market sizes, and then computed the impact of losing 50 percent of that revenue. On the assumption that candidates would buy at least one-third more

¹ "For Media Consultants, Politics is a Gold Mine," *Christian Science Monitor*, Oct. 28, 1988, p. 1.

² *Ibid.*

spots at a lower rate, we then calculate the value of lost revenue from the spots themselves, as well as the value of commercial advertising which could not be carried due to the increase in political ads. As you can see by the chart that is attached at the end of this testimony, we are talking about average revenue losses in major top-ten markets of \$1.6 million per station, had these rules been in effect in 1994. Even smallest market stations would have seen losses of \$270,000 each on average. The point is that a 50 percent discount will have a very real impact on the ability of stations to operate profitably. And given the re-definition of lowest unit charge in S. 1219, these numbers are conservative, because that redefinition will likely drive down the basic lowest unit rate from which the discounted rate will be figured.

The creation of lowest unit rates was based on the notion that candidates ought to be accorded the same treatment that a station's best commercial advertiser gets. These proposals go well beyond that, however, and suggest that candidates ought to be given treatment more than twice as good. Considering the debate on whether America spends too little or too much on campaigns to begin with, it is very difficult to justify such a proposal.

Reduced revenues also can only mean reduced ability for stations to serve their local communities with the services the public expects—local news, public affairs and other programming.

Free Time Mandates Are Unnecessary and Unconstitutional

Proposals calling for mandated free time for candidates also cause us concern.

The proposal in S. 1219 and other legislation would provide free time to candidates on all stations within a given state and adjacent states. It would set 30 minutes per Senate candidate as the requirement, and would leave it to candidates as to how to administer their free time access on various stations.

While 30 minutes spread across every station in a state for some states may not be a large amount, it does represent the beginning of free government-mandated speech in the area of politics. And while some stations may be able to provide such time without facing financial ruin, we question whether any need has been established for the government to force this kind of political speech on anyone. Moreover, once this precedent is adopted, what about other races? House candidates? State and local candidates? Where would the free time stop?

The fact is that many stations offer free time to candidates in a number of ways—but *each of those ways is voluntary*. Stations already provide major amounts of political coverage of campaigns in their news, public affairs programming, and election coverage specials. In addition, many stations air debates between candidates, often sponsoring the debates themselves, as well as public affairs interviews and candidate forums.

Many attempts are made each year by broadcasters to bring together candidates for major offices in debates—but unfortunately, either one side or the other refuses to appear at such debates. NAB conducted a survey of radio and TV stations following the 1990 elections, and found that over 50 percent of radio stations and over 46 percent of TV stations had offered free time to candidates for debates. Unfortunately, over a fourth of those debate offers were rejected because one of the candidates declined to participate. In addition to these forums sponsored by the stations, approximately a fifth of the radio (16.2 percent) and television (22.4 percent) stations surveyed reported that their stations carried candidate debates or forums sponsored by groups other than themselves.¹

Moreover, over 90 percent of radio and television stations aired public service announcements before election day to encourage people to vote. Further, 50 percent of the radio and nearly 57 percent of television stations aired local public affairs programs or segments within these programs dealing with issues and candidates of the 1990 elections.²

¹ "In the Public Interest: A Survey of Broadcasters' Public Service Activities: A special report from Research and Planning," The National Association of Broadcasters, May 1991, p. 3.

² Ibid.

Candidates want free time for their tightly-produced messages, not for actual, face-to-face discussions. "Spin doctors" have a much harder time controlling the outcome of a debate than they do commercials.

Announcements last week by the major networks prove again that national, mandated free time is unnecessary. Each of the networks has indicated it will provide free opportunities for the Presidential candidates to address the issues during the weeks prior to the November election. Those opportunities will come in addition to the extensive news and public affairs coverage that all of them will provide between now and the election. But there is a distinction to be made here—the networks, as national programmers, have only one race to worry about. Local stations cover dozens of local races, and it is an entirely different question to provide large amounts of free time to every single campaign in a broadcaster's signal area.

Beyond that question, the issue really is not if the candidates use the time that is offered to them, but how they will use it. Will they use it to attack their opponent? Will they use it to repeat sound bites that they know work? Whether or not candidates truly take advantage of the time offered them it is up to them. As Marvin Kalb of the Shorenstein Center on the Press, Politics and Public Policy at Harvard University points out, if the free time proposal in S. 1219 were adopted and the "free time would be made available in the dwindling days and weeks of a long, exhausting campaign, it seems more likely that they (the candidates) would be cautious and use the extra time not for lofty discourses on public policy but rather for repeating time-tested slogans or tearing into their opponents record."¹ Would this be serving the public interest?

Another concern is logistics. What about TV stations in markets like New York City, where viewers watch those stations in three different states? How fair would it be to require those stations to carry free time for candidates from New York, New Jersey and Connecticut? Think of the dozens of House races, not to mention Senate races, Governors races, and other local elections that might be eligible for such treatment. While S. 1219 deals only with Senate candidates, there is no certainty that such free time or discounted time would be available only to those few candidates.

There also is no guarantee that once the precedent is established with 30 minutes per state per candidate, the limits could not be raised later on. What is to stop the government from mandating 30 minute per station? Or 60 minutes?

Mandating that broadcasters give free time to candidates is what is referred to in the 5th Amendment to the Constitution as a "taking." A taking, as defined by Black's Law Dictionary, is "to gain hold or receive into possession; to seize; to deprive one of the use or possession of; to assume ownership." Thus, constitutions generally provide that a man's property shall not be *taken* for public uses without just compensation.² Yet here, there would be no compensation. And since airtime is the only commodity stations sell, we believe there is a clear constitutional concern.

A number of constitutional experts have voiced these concerns as well. We want to associate ourselves with their views and urge the committee to look at this issue from a constitutional perspective.

Only when the government can show that the ONLY way to address the concern is by mandating free time can it argue that such an approach might be acceptable under the First Amendment. But as we have discussed, there are innumerable ways for candidates to reach the audience through voluntary free time offered by stations, as well as through already-discounted airtime sold to them. A free time mandate—no matter how small initially—is a dangerous step which we believe is clearly unconstitutional and unwarranted.

Let's also be very clear—there is no "free" time. Someone is paying for it—in this case, it is the local broadcaster. The cost is not only the cost of covering the campaign itself, but also the revenue that could have been sold to commercial advertisers.

¹ "Free Time, More Substance," by Marvin Kalb, The Washington Post, Mar. 20, 1996, p. 19.

² Black's Law Dictionary: with Pronunciations, Henry Campbell Black, West Publishing Co., 1979, p. 1303.

One Solution—Make The Current Broadcast Discount the Incentive

The perceived need for all of these free and reduced-priced proposals is that candidates must have an incentive to agree to an artificial spending cap on their campaigns. Therefore, their authors reason, further discounts and free time can be that incentive.

But that theory—if true—need not burden local TV and radio stations. Why not simply make the current lowest unit rate charge the incentive? Why not simply say to candidates—“if you do not agree to overall spending limits, you will have to buy your airtime just like commercial advertisers do, at going rates”?

Mr. Chairman, that may sound like a radical thought, but if you buy the theory of the campaign reform proposals we’ve seen, there may be some logic to it. And by doing so, Congress would not be helping itself to further benefits, either from taxpayers or from broadcasters.

If this committee is truly bound to move forward on such legislation, we would be willing to discuss this proposal or others with you.

Summary

In conclusion, we believe that the myth of advertising as the demon of campaign costs is just that—a myth. If campaigns have become too expensive these days (although many would argue they are not), there are ways to address that issue without placing an unfair and unconstitutional burden on broadcasters.

Lowest unit rates provide candidates with a fair discount, while ensuring that stations receive compensation for their time. Mandated free time is not necessary—as witnessed by the huge amount of free time provided to candidates in the form of debates, news coverage, public affairs programs and more. Similarly, calls for 50 percent discounts below lowest unit rates are punitive and do not recognize the impact such advertising revenue losses would have on broadcasters, particularly during the last 4 months of a calendar year.

The issue of campaign reform goes well beyond the political advertising issue, and we profess no expertise in these areas. But we can say that the proposals offered so far would have a negative impact on thousands of broadcasters and raise serious constitutional questions. We urge this committee to oppose any legislation which would either mandate free time or would drastically discount the already-discounted time that stations provide to candidates under current law.

Thank you for the opportunity to present our views at this hearing.

The CHAIRMAN. Thank you very much.

Senator, would you like to make a few—

Senator MCCONNELL. No, Mr. Chairman. I will pass on an opening statement. I am anxious to hear from the witnesses.

The CHAIRMAN. Thank you.

Ms. Crawford?

TESTIMONY OF JAN ZISKA CRAWFORD, JAN CRAWFORD COMMUNICATIONS, PARIS, VA

Ms. CRAWFORD. Thank you, Mr. Chairman.

I want to thank you for the opportunity to speak to you today on the aspects of political time-buying and the effect that legislation currently before this committee might or might not have on the political process.

Prior to the 1990 summer audit of 30 television and radio stations across the country, many stations were selling spots to candidates at a higher rate than their most favored advertiser. Today, following the FCC’s 1990 self-education of broadcasting practices and the issuance of its December 1993 Report and

Order, requiring full disclosure, candidates should be realizing benefits of lower broadcast rates. However, we continue to see campaign costs escalate. Why?

I have been witness to enormous change in the importance and influence of paid broadcast media in the election process. I have also witnessed explosive growth in the number of political media consultants. This reliance on broadcast media to deliver a candidate's message, coupled with the massive swelling of political media consultants, has contributed to today's high campaign costs.

The belief that the stations are the only culprits responsible for the spiraling costs of campaigns is erroneous. In many political campaigns today, paid broadcast media is the sole method of communicating with the voters. Television is the most utilized. In many cases, it is the only medium. Who decides how the vast majority of the money raised for campaigns is to be spent? And where? The answer is very simple: the media consultants.

The FCC's 1991 Report and Order requiring full disclosure has had an enormous effect on the business. The vast majority of stations are complying with this requirement. However, many interpretations and much confusion still exist. Communications attorneys give their own legal interpretation. They, however, do not understand the sales aspect of the broadcast industry. Depending on the selling practices of a station or station group, the legal interpretation can be correct for one station and incorrect for another.

Too many consultants, both Democratic and Republican, hire inexperienced buyers to spend millions of dollars. These young buyers fail to grasp what an avail is or a gross rating point, let alone FCC law. Strategic time-buying includes knowing the law and maximizing every dollar raised. Given that most consultants are paid on a percentage basis, there is no incentive to keep the spending down.

There is also a buying pattern that is emerging that concerns me a great deal. It is called buying news. It is a safe buy, and the same buys each week. Research shows that voters who watch the news each night are less persuadable than those that don't and they pay less attention to political ads in news programming than in other shows.

The CHAIRMAN. May I interrupt? Would you reread that one more time?

Ms. CRAWFORD. Sure.

The CHAIRMAN. I find that very dramatic.

Ms. CRAWFORD. Research shows that voters who watch the news each night are less persuadable than those that don't and they pay less attention to political ads in news programming than in other shows. More and more, it is the undecideds who are responsible for determining the outcome of an election. They need to be reached through other programming and other media.

Another reason that costs have continued to rise is that rather than strategic targeting, consultants believe that the more gross rating points, the better. I am sure that every Member of the Senate has heard these words. That is you are asked to spend so much of your time raising money. However, if your media buy is the same each week, are you reaching more voters or just the same time and time again? Quality production with a succinct and clear message, coupled with a varied and targeted media plan, in conjunction with the campaign's polling data, will have an impact. No matter how much money is put into a media buy, if the message is not succinct, clear, and strategically targeted, the money for both the buy and the production has been utterly wasted.

Mr. Chairman, Senators, we must address some very important questions, and that is why we are here today. I have four questions here.

One, if the stations disclose properly and the consultant chooses to purchase some, if not all, time at a higher rate than necessary, who is responsible for the higher campaign costs?

Two, who is responsible for utilizing only television and not radio and cable in the mix?

Three, do you really believe that 30 minutes of free time will add to the discussion of the issues?

And, lastly, do you really believe that campaign costs will decrease if stations are made to sell time at 50 percent below the lowest unit rate?

My answers are:

To the first one, it is the consultants who advise you to buy more and more air time and who do not utilize creativity in strategic planing and targeting—let alone understand the law—and they are the ones responsible for escalating campaign costs.

Two, it is those same consultants who tell you only to buy television and not cable and radio. In many cases, a good mix of cable and radio is all that is needed in some congressional races.

Three, I don't believe that 30 minutes of free time will have any impact on the discussion of the issues. Also, to the best of my knowledge, the FEC still considers free air time, outside news programming, a corporate contribution, thus illegal for Federal candidates.

And, lastly, 50 percent off the lowest unit rate will not decrease campaign costs because those same consultants will just buy more ad time.

Some possible solutions:

One, if stations disclose properly, you as candidates should hold your consultants responsible for the rates they pay. This is their expertise. This is what you pay them to do. They should know the law and, if necessary, take the time to call the stations when they feel that the stations are in error. If that does not resolve the problem, they should call the FCC.

Two, demand a mix of the media—television, radio, cable, and shortly the Internet.

Lastly, shorten the political protection periods from 45 and 60 days to 30 and 45. I strongly believe that it is the proliferation of all ads and the duration of campaigns that have had the greatest impact on voter turnout. One can buy too much media time. Unfortunately, the majority of political media consultants believe in the old adage, "The more the merrier," and it is more merrier on television. There is a point at which a candidate discourages voters from voting for them because they, the voters, are sick and tired of seeing a candidate's commercials.

I am a strong believer in spending limits. I believe that they would generate more creativity and strategic thinking. Campaigns, frankly, would be more fun.

Someone recently described to me their idea of campaign finance reform, and it is this—and, actually, I think it is very intriguing. If a candidate accepts spending limits, they receive the lowest unit rate. If they do not, they pay the going rate.

Perhaps, Mr. Chairman, this is an idea worth considering. Thank you.

The CHAIRMAN. You ought to raise your voice and give that final conclusion. What did you say? Perhaps this is an idea worthy?

Ms. CRAWFORD. Worthy of consideration, yes.

[The prepared statement of Ms. Crawford follows:]

PREPARED STATEMENT OF JAN ZISKA CRAWFORD, JAN CRAWFORD
COMMUNICATIONS, PARIS, VA

Mr. Chairman, my name is Jan Ziska Crawford and I have been a political media consultant for 26 years in over 200 campaigns from school board to Presidential. I currently serve on the Board of the American Association of Political Consultants. My expertise in FCC law is recognized by stations, their representatives, communications attorneys and even the FCC.

I thank you for the opportunity to speak to you today on the aspects of political time-buying and the effect that legislation currently before this Committee might or might not have on the political process.

Prior to the 1990 summer audit of 30 television and radio stations across the country, many stations were selling spots to candidates at a higher rate than their "most favored advertiser." Today, following the FCC's 1990 self-education of broadcasting practices and the issuance of its December 1991 Report and Order, requiring "full disclosure", candidates should be realizing benefits of lower broadcast rates. However, we continue to see campaign costs escalate. Why?

I have been witness to enormous change in the importance and influence of paid broadcast media in the election process. I have also witnessed explosive growth in the number of political media consultants. This reliance on broadcast media to deliver a candidate's message coupled with the massive swelling of political media consultants have contributed to today's high campaign costs.

The belief that the stations are the only culprits responsible for the spiraling costs of campaigns is erroneous. In many political campaigns today, paid broadcast media is the sole method of communicating with the voters. Television is the medium most utilized. In many cases, it is the only medium. Who decides how the vast majority of the money raised for campaigns is to be spent? And where? The answer is simple—the media consultants.

The FCC's 1991 Report and Order requiring Full Disclosure has had an enormous effect on the business. The vast majority of stations are complying with this

requirement. However, many interpretations and much confusion still exist. Communications attorneys give their own legal interpretation. They, however, do not understand the sales aspect of the broadcast industry. Depending on the selling practices of a station or station group, the legal interpretation can be correct for one station and incorrect for another.

Too many consultants, both Democratic and Republican, hire inexperienced "buyers" to spend millions of dollars. These young buyers fail to grasp what an "avail" or a Gross Rating Point is, let alone FCC law. Strategic time-buying includes knowing the law and maximizing every dollar raised. Given that most consultants are paid on a percentage basis, there is no incentive to keep media expenditures down.

There is a buying pattern emerging that concerns me. Too much "news" and the same buys each week. Research shows that voters who watch the news each night are less persuadable than those that don't and they pay less attention to political ads in news programming than in other shows. More and more, it is the "undecideds" who are responsible for determining the outcome of an election. They need to be reached through other programming and other media.

Another reason that costs have continued to rise is that rather than strategic-targeting, consultants believe that the more Gross Rating Points the better. I am sure that every Member of the Senate has heard these words. That is why you are asked to spend so much of your time raising money. However, if your media buy is the same each week, are you reaching more voters or just the same—time and time again? Quality production with a succinct and clear message, coupled with a varied and targeted media plan (in conjunction with the campaign's polling data) will have an impact. No matter how much money is put into a media buy, if the message is not succinct, clear, and strategically targeted, the money for both the buy and the production has been utterly wasted.

Mr. Chairman, Senators, we must address some very important questions.

1. If the station discloses properly and the consultant chooses to purchase some, if not all, time at a higher rate than necessary, who is responsible for the higher campaign costs?
2. Who is responsible for utilizing only television and not radio and cable in the mix?
3. Do you really believe that 30 minutes of free time will add to the discussion of issues?
4. Do you really believe that campaign costs will decrease if stations are made to sell time at 50 percent below the lowest unit rate?

I will give you my answers:

1. It is those consultants who advise you to buy more and more air time and who do not utilize creativity in strategic planning and targeting—let alone understand the law who are responsible for the escalating campaign costs.
2. It is those same consultants who tell you only to buy television and not cable and radio. In many cases, a good mix of cable and radio is all that is needed in some Congressional races.
3. I don't believe that 30 minutes of free time will have any impact on the discussion of the issues. Also, to the best of my knowledge the FEC still considers free air time (outside news programming) a corporate contribution, thus, illegal for federal candidates; and lastly,
4. 50 percent off the lowest unit rate will not decrease campaign costs because those same consultants will just buy more ad time.

Some possible solutions:

1. If stations disclose properly, you, as candidates, should hold your consultants responsible for the rates they pay. This is their "expertise." This is what you pay them to do. They should know the law and, if necessary, take the time to call the stations when they feel that the stations are in error. If that does not resolve the problem, they should call the FCC.
2. Demand a mix of the media—television, radio, cable and even the Internet.

3. Shorten the political protection periods from 45/60 to 30/45. I strongly believe that it is the proliferation of all ads and the duration of campaigns that have had the greatest impact on voter turnout. One can buy too much media time. Unfortunately the majority of political media consultants believe in the old adage, "The more the merrier"—and it's more merrier on television. There is a point at which a candidate discourages voters from voting for them because they (the voters) are sick and tired of seeing a candidate's commercials.

I am a strong believer in spending limits. I believe they would generate more creativity and strategic-thinking. Campaigns would be more fun.

Someone recently described to me their idea of campaign finance reform. If a candidate accepts spending limits, they receive the lowest unit rate. If they do not, the candidate pays the prevailing rate.

Perhaps, Mr. Chairman, this is an idea worth considering.

The CHAIRMAN. Your testimony is to the point.

Mr. Bramstedt?

TESTIMONY OF AL BRAMSTEDT, GENERAL MANAGER, KTUU-TV, ANCHORAGE, AK

Mr. BRAMSTEDT. Thank you, Mr. Chairman.

My name is Al Bramstedt. I am general manager of the NBC affiliate in Anchorage, Alaska. I thank you and Senator Stevens for allowing me to speak to you this morning on the impact broadcast provisions that the campaign reform proposals would have on small market television. During the next few minutes, I want to discuss the effects of the bill's free-time provision, and you will hear examples of how these provisions, with reductions in the lowest unit rate and revised classification of time, will bring about financial harm to many smaller stations.

Changing technologies will present new challenges in the future, but with calm minds and stout hearts, America's television broadcasters, even most of the small market broadcasters, will meet these challenges and remain viable. Today, as in the years ahead, that viability depends on stable income.

A.C. Nielsen ranks Anchorage, Alaska, number 156 in market size. Although that is considered small, there are dozens of other markets even smaller. At our market, with its low television station profit margin, every dollar makes a difference.

Political advertising revenue is no exception. In 1994, Anchorage market cash revenue for television totaled over \$19 million. Political advertising represented more than 10 percent of that total, close to \$2 million.

In any business decision, I believe we must consider the impact of Isaac Newton's third law of physics. Newton taught us that for every action there is an equal and opposite reaction. The action of the free-time provisions of S. 1219 would be to disrupt and reduce revenue from political advertising upon which we, as small market television broadcasters, are dependent.

Our station's regular advertisers in turn depend on television to deliver the vital fourth quarter revenue that sustains them in

the other 9 months of the year. Local broadcasters also depend heavily on fourth quarter revenues to meet their overall profitability. S. 1219 and proposals like it would reduce television's effect as an advertising medium for commercial advertisers each political season and would directly impact our ability to operate profitably.

The free-time ads provisions would not really be free. Newton was right. There will also be a reaction. To make up for revenue lost by displacing regular advertisers, broadcasters would have to increase already challenging fourth quarter rates for their year-round advertisers or simply eat those costs themselves. There is no such thing as free time. The cost of providing this free time under S. 1219 would be paid by advertisers and broadcasters.

Mandated free-time proposals are unnecessary. Broadcasters already are providing ever increasing news and public affairs coverage of Federal candidates' campaigns, all without the force of Federal law.

It is unfair that, while more coverage is taking place, broadcasters are being singled out by this proposed legislation, unlike our other major advertising competitor, which is the newspaper.

The current lowest unit rate law contains remarkable benefits for a political candidate. For 45 days prior to the primary election and 60 days prior to the general election, legally qualified candidates receive the lowest rates the station provides its most favored advertisers. Even in small markets, to receive these substantial discounts which are typically 25 percent or greater, non-political advertisers must spend at least \$100,000 each year.

Under the current lowest unit rate provisions during this most important pre-election period, candidates pay the lowest rates possible without a commitment of any kind. Any greater discount for them, much less any free-time provisions, would be unfair not only to television broadcasters but also to every fourth quarter advertiser.

In conclusion, I urge you to reject S. 1219. The free-time provisions contained in this bill would harm television broadcasters financially and disrupt advertisers significantly. Further discounts and revising of the classification of time simply would put the fourth quarter of every election year unmanageable for television broadcasters.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I would like to lead with a question to you, Ms. Crawford. If the Congress were to decide that additional discounts should be enacted for television time or mailing, do you believe it would be appropriate to include similar discounts for radio and cable advertising?

Ms. CRAWFORD. Oh, absolutely. I think it has to be across the board.

The CHAIRMAN. Across the board.

Ms. CRAWFORD. It has to be across the board.

The CHAIRMAN. Mr. Schmidt?

Mr. SCHMIDT. I agree. I think Mr. Bramstedt pointed out the difficulty of not including newspapers in that, and that obviously raises a whole host of constitutional issues. But I think it is very difficult to leave them out of the mix.

Mr. BRAMSTEDT. I agree, Senator.

The CHAIRMAN. You agree with that?

Mr. BRAMSTEDT. Yes, absolutely. It should be fair across the board.

The CHAIRMAN. A question to Mr. Schmidt. Your prepared statement mentions that campaigns already receive very preferential treatment on ad prices. Can you estimate how much money candidates save because of such subsidies?

Mr. SCHMIDT. Well, the studies that I have seen in our experience at the LIN stations, I would estimate it is around 25 to 30 percent, on average. It is difficult to pin down exactly because the class of time mix isn't the same as commercial advertisers. But I think as Ms. Crawford pointed out, since the FCC has stiffened enforcement of the lowest unit charge provision, the discounts have become quite substantial.

I would also point out that there is another provision in S. 1219. It is not simply a 50 percent discount off existing law. It eliminates the provision that limits lowest unit charge to class of time, and that, I believe, will amount to essentially another 50 percent on top of that 50 percent, really more effectively a 75 percent discount off existing rates.

The CHAIRMAN. Very interesting.

Mr. Bramstedt, could you deal with that?

Mr. BRAMSTEDT. Very difficult. Back to what Mr. Schmidt just mentioned about the classification of time, when I mentioned in my testimony unmanageable, it really would render that entire fourth quarter area of the inventory very unmanageable. When you eliminate the classification of time under the previous lowest unit rate rules, very difficult.

The CHAIRMAN. Would you care, Ms. Crawford, to deal with that one, too?

Ms. CRAWFORD. I think that having the lowest unit rate, 50 percent off the lowest unit rate, it does create a lot of problems. I think if the consultants paid attention to the rates that are being given now and challenged when they—again, going back to my testimony, when they didn't feel that it was correct. And it is a simple phone call. I have even had the FCC ask me why more consultants don't complain. And I think—I don't know if we should get into it, but this is one of the reasons why there are some of these lawsuits that are going on around the country. And consultants are—

The CHAIRMAN. Could you bring that mike just a little tighter to you?

Ms. CRAWFORD. The consultants are not named in the lawsuits. It is the candidates, the Members of Congress. You don't see what the stations give to the media consultants, the various rates, the disclosure statement. Only the consultants. And I am sure that what is going to happen in these lawsuits is that the consultants will be brought into it. And I have tried to warn my other members on the board of the AAPC, and some of them acknowledge it, and some don't.

The CHAIRMAN. Mr. Bramstedt, the testimony stated that the average spent on electronic media for Senate races was 40 to 44 percent of the campaign budget. Does the term electronic media include radio in addition to TV advertising? If so, could you provide any additional breakdown on the average spent on just TV and just radio?

Mr. BRAMSTEDT. Yes, I believe the figure that we have put forth, those are numbers relating to television, and I am not aware of numbers for radio. But I believe that share was an estimate made by FTC figures on television expenditure.

The CHAIRMAN. It also was noted in the testimony that the spending averages include the cost of producing the ads. Do you have any breakdown of what percent of the TV costs are paid for ad production?

Mr. BRAMSTEDT. No, that is—

The CHAIRMAN. As opposed to the time, the broadcast time.

Mr. BRAMSTEDT. Yes, sir. No, I don't have that information. I know it is wrapped all into one, and that would be a significant amount. But I don't have that broken out.

The CHAIRMAN. Do other witnesses have anything to shed on this question?

Ms. CRAWFORD. Well, Senator, I know that some of the producers I have worked with, the spots can average from a minimum of \$5,000, to \$10,000, \$15,000, \$30,000 a spot. And it is really hard—the broadcasting industry is not going to know what the consultants are charging. It is all based on who the consultant is and how they deal with it, if they do film or videotape, and it gets very complicated.

The CHAIRMAN. Again, I will put my last question to you, Ms. Crawford. You suggested instead of expanding discounts to candidates that discounts already required by law should apply to a shorter period before the election. Could you expand a little bit on that?

Ms. CRAWFORD. I have always felt that—campaigns are beginning earlier and earlier these days, and perhaps if the time period was shorter for the lowest unit rate, it might aid in the voter turnout because people would not be so turned off from the campaign.

If you look at Colorado, Colorado is a good example because their primary is in August. So you have the 45 days before their primary, and then you automatically almost go into the 60 days

before the general. So you have got 4 or 5 months of political advertising going on in a tightly contested race.

The CHAIRMAN. Senator Ford? And we welcome Senator Pell. Senator Pell, do you have any opening statement you would like to make?

Senator PELL. I have a short opening statement. I can give it now or—

The CHAIRMAN. Why don't you wait until your question period?

Senator PELL. Fine.

The CHAIRMAN. Senator Ford?

Senator FORD. Thank you, Mr. Chairman.

Mr. Schmidt, charts submitted with your statement on the effect of the 50 percent discount—I believe it is yours—on revenues appear to include all—I underscore all—political candidates and gross political advertising revenues. The bill that we are discussing here today provides for a discount for the Senate candidates only.

Of course, in an election year, the maximum would be 34 States, and that would be once every 6 years. The other 4 years, every other year it would be 33 States. So it wouldn't be all States that would be involved.

Even if we assume that the discount would be extended to House candidates, some use TV and some don't. It depends on what district. And I assure Ms. Crawford I kind of like drive-time radio myself. It would be much more informative if you would provide figures based on the bill's provisions of Senate races only with some estimate of the House candidates. Can you give me that today?

Mr. SCHMIDT. I do not have that number today. We can put our people—

Senator FORD. Can you do that?

Mr. SCHMIDT. We can try and come up with a number.

Senator FORD. We get caught up in—you give all political candidates and all revenue, and we are here today trying to look at the Senate, and that is about all we are going to have any control over. Because when it goes to the House, they are going to have different provisions and different thoughts because of 435 districts and where they are and that sort of thing. So if you would provide that information, I would be appreciative. I will ask that the record stay open until you can provide that information.

Mr. SCHMIDT. We would be delighted to, Senator.

[Information responding to Sen. Ford's inquiry is provided by James C. May, in materials submitted for the record.]

Senator FORD. All of you appear to agree that the discount provided under current law, the lowest unit rate, is appropriate. And according to NAB's statement, the lowest unit rate under

current law amounts to a 30 percent discount from regular commercial rates. Am I correct in that statement?

Mr. SCHMIDT. I believe that is an average. Obviously race by race and station by station, the number can vary.

Senator FORD. But we have all got to use averages here. Some will get less and some will get more, but the average is 30 percent. And the NAB's statement includes the argument that the discount of 50 percent off of the lowest unit rate, which it indicates to be a discount of 62.5 percent off the commercial rate, is punitive. So am I correct that, according to NAB, 30 percent is okay but 62.5 percent is punitive? That gives the committee, in my opinion, quite a bit of leeway. At what point do you all consider the discount to become punitive? And why?

Mr. SCHMIDT. Well, I am not sure there is a bright line, and I am quite sure that there are a large number of broadcasters who believe that the existing discount is not—is, in fact, punitive and unfair.

As I said, it has already created great problems with station inventory management. It creates substantial disruption of existing advertisers. It creates incentives not to carry State and local candidates who do not have the guaranteed access right.

As we know, it falls in critical times of the year, particularly in the October-November period, September-October-November, which is the quarter in which a disproportionate number of the station revenues for the year are gathered.

It is already a very heavy burden, and as I alluded to, I think if it came under judicial scrutiny, it would be vulnerable. But it has grown up in an environment where people have learned to live with it and have managed their inventory and developed techniques for trying to adjust things to make it work.

Adding on top of that really any substantial amount we think is punitive, is clearly punitive. And as I also said, I don't think this is just a 50 percent additional discount. By eliminating the provision on class of time, I think it is substantially greater than that. You essentially get down to the lowest charge that any advertiser is sold for that time period, no matter how that time is sold. As Jan knows, there are certain advertisers who are sold on the basis of: "It will run some time this year. Your spot is a bargain basement, bottom-dollar spot. Wherever we happen to have an opening, we will drop you in."

Well, if that is dropped in at a time when a political spot runs, that now becomes the lowest unit charge.

Senator FORD. If you have insomnia, you can see some at 2 a.m.

Mr. SCHMIDT. But some of those spots run at better times just because they happen to be there at a time when there is an availability. That is an enormous discount.

Senator FORD. There are some people around here who want to take the air waves back. If we start selling spectrums, those with the money and the consortiums are going to probably

absorb all that, and we will have some kind of problem. So this is beginning to take on, with the new telecommunications bill and all that, it is taking on new life. And the spectrum is now being used or is proposed to be used to offset tax cuts, and they don't go into effect until 1998, you know. So we have got a lot of furor, and I think it reflects and will reflect into the business that you are representing here today, and in some ways I regret that. But something has to be done about the money chase. Others said just go get all you can get, spend all you can get, and that is fine. Others feel like it is not quite that easy.

Ms. Crawford, I kind of liked your statement, and a lot of media buyers out there want you to buy, and they take that percentage. They don't care whether you come out well or not, as long as they get their little cut.

Ms. CRAWFORD. No, they don't.

Senator FORD. And I have noticed the encouragement to go to the bank and borrow money and put it in your campaign so we can get some more TV.

Ms. CRAWFORD. Mortgage your house, which some Senators have done.

Senator FORD. Yes, I understand. And some have a lot of money and don't care, you know, just dump another million or two in. If we do continue to do that, some very intelligent, well-prepared individuals will not be here. And so that is one of the reasons I think we have to have a variety here of those that are parents raising children, sending them to school, seeing the hazards of that, so they can have the input.

One of the finest speeches I have heard made in this Senate in a long, long time was by a new Senator. That Senator said that the salary she—and it was a female—received prior to coming here was \$23,000 as a teacher and how she had to struggle. And she brings a new perspective. We get to the point where you can put your millions in and we don't have the opportunity to participate. We lose that. And so that is one of the reasons I think we ought to give everybody an opportunity irregardless, and to make a level playing field.

Ms. CRAWFORD. I agree, Senator.

Senator FORD. We get the constitutional question here that we can't do this because it is unconstitutional and the First Amendment. And I understand all that. But I have a real problem excluding a lot of fine folks out there from having an opportunity. Maybe the Texas race will give us some indication.

Ms. CRAWFORD. I was just thinking of that.

Senator FORD. A pick-up truck and \$9,000 is the incumbent's worst nightmare. So, you know, maybe it will work itself out.

You also suggested that if we have spending limits, it would generate more creativity and more strategy and thinking about how to get it done. You also suggested that we consider providing lowest unit rates to candidates who accept the spending limits but not to others.

I see a couple problems with that suggestion, and I want you to come back to it.

Ms. CRAWFORD. Okay.

Senator FORD. First, lowest unit rates would probably not be a sufficient inducement, in my opinion, to a Senate candidate to agree to limit spending. And, second, unlike the McCain-Feingold bill, it would not allow the candidates more resources while setting reasonable limits on overall spending.

Would spending limits work better, generate more creativity and thinking if, instead of just lowest unit rate, we increased the candidate's resources without increasing the amount of spending?

Ms. CRAWFORD. Probably. When I first got into this business, I not only signed the NAB form saying that I was requesting time, but I had to certify that I was not spending more than 10 cents per voter in that particular State. And I will tell you, when I did Floyd Haskell's race for the Senate in 1972, I think we spent about \$50,000 statewide, radio and television. When I did Dick Lamb's campaign for Governor, his first campaign in 1974, in the primary and the general I spent a total of \$85,000 statewide, radio and television.

Some of those same rates still apply to this day in Colorado, depending on the stations and the programming. That is why I referred to spending limits making it more creative, because to most consultants nowadays—it is spending the money. There are some consultants who actually send checks out to either the stations or to their reps and say spend the money, and there is no accountability. There is no reasoning as to why those programs are being bought, why that money is being spent.

I am a big believer in spending limits, and I think it does level the playing field. I think that resources could be opened up to make it easier to raise the money for campaigns. I think voters should be able to contribute more. They are not going to buy an election by giving \$100 or \$200 or even \$5 or \$10. And maybe some of that should be tax deductible. That would encourage more participation.

Senator FORD. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator McConnell?

Senator MCCONNELL. Mr. Schmidt, the current lowest unit rate, of course, applies to State and local elections as well, does it not?

Mr. SCHMIDT. That is correct.

Senator MCCONNELL. And I think it is reasonable to assume that the Congress would not enact a bill that didn't apply to all races—Senate, House, State, and local. My staff took a look at your chart—and, by the way, the bill currently applies only to television. I am assuming that any finished product would also apply to radio, just like the current lowest unit rate discount applies to radio as well as TV, as well as Federal, State, and local,

because, after all, we represent all of these sheriffs and others who are going to be in here asking why should it cost more to run for Congress than it does to run for sheriff. That is a pretty hard question to respond to. So as a practical matter, if there were such a discount imposed, it would be imposed across the board—radio, television, all races, Federal, State, and local.

My staff analyzed the chart, and we estimated that your industry would lose around \$700 million in revenue, not only from the 50 percent off but also from the lost revenue from potential advertisers. Does that sound roughly accurate to you? I know this is a bit of a guesstimate on your part because it is so massive. But give me a sense of that.

Mr. SCHMIDT. There are so many variables and assumptions that have to be made there, but I think that is a very reasonable and, in fact, conservative estimate of what could happen from this bill.

Senator MCCONNELL. And the \$700 million figure was only television. I am assuming that in the end it will apply to radio as well as TV.

Mr. SCHMIDT. And cable as well, I assume. Yes.

Senator MCCONNELL. You expressed the view, and I have heard this from many broadcasters in the past, that the current discount is of dubious constitutionality or legality, depending upon your point of view. I think it is safe to assume if this bill were to become law you would be in court instantly, would you not, questioning not only this newly mandated proposal, but the existing proposal?

Mr. SCHMIDT. I have already seen numerous proposals circulating within the industry to attack the existing scheme. They have not as yet come to fruition, but I am confident that if something like this were passed—and I don't know from precisely whom the attack would come, but there are going to be people whose profitability is so threatened, whose existence is even threatened, that they will find it well worth their while to take this to court. I am confident. And there are many—we do not, obviously the NAB doesn't have—whether it files or not, there are many independent broadcasters who have a big stake in this, and I am sure that one or more of them will take this up.

Senator MCCONNELL. Any time the Government tries to dole out speech requirements, it becomes sort of a Rube Goldberg result. And I think that is particularly obvious as you look at trying to require your industry to subsidize political races.

What about a station that has the misfortune, say, of being on a State line? I my State, I think of the Cincinnati media market. Those folks, unfortunately for them, being along the Ohio River, are going to be required to provide subsidies not only to the Ohio candidates, but to the Kentucky candidates as well. The same could be said of the Louisville market, and I can imagine what it would be in some other markets that don't come to mind at the

moment that may be right in the vortex of a variety of different States.

How do you see that playing out?

Mr. SCHMIDT. Paducah. Paducah has three States, I believe.

Senator MCCONNELL. Yes.

Mr. SCHMIDT. We looked at New York. I believe there are 35 House races alone that would be in service areas of the New York stations.

Senator MCCONNELL. And they would have to deal with the New Jersey situation as well.

Mr. SCHMIDT. New Jersey, Connecticut, and New York. That would be 35 different House races. You are absolutely right. I mean, this—

Senator MCCONNELL. So because of the accident of location, some stations would be punished more than others under this proposal.

Mr. SCHMIDT. The effects would be very extreme in their differences on various stations. North Carolina is covered in the WAVY service area. The Washington, DC, stations obviously would have multiple problems. This is a problem in the existing litigation, and it is the reason why the stations have sought to pre-empt State court actions, because if you can be sued on a contract action in each different State and each different State can have a different interpretation of what lowest unit rate is, it may literally be impossible to comply with all of the different interpretations of the States on a single TV station.

Senator MCCONNELL. So in this bill—this is not why you are here to testify, but in this bill, in addition to the Government's effort to control the speech of 535 additional races, it would also take property, in effect, from a private business in sort of capricious amounts based upon the location of those businesses around the country.

Mr. SCHMIDT. That is correct. And as I said, it also would tend to fall, as much as I would like to think that the buyers will be more sophisticated and more like Ms. Crawford, they still tend to buy news. And so it would fall disproportionately on news, strong local news stations, and it would come at the expense of the other public service activities that they have. It would be basically a reduction in the return on news, and that means there will be less news.

Mr. BRAMSTEDT. Senator McConnell?

Senator MCCONNELL. Yes, Mr. Bramstedt?

Mr. BRAMSTEDT. One additional point on treating stations differently, unfairly. In the taking, the dominant stations will be the ones that will be approached more aggressively. I think the legislation states up to 15, no more than 15 minutes per station. In my marketplace—this is the NBC affiliate—we are the dominant station. We are also the station that has the least amount of inventory to provide. So it has a double aggravated

effect in the taking, and it really does treat different stations differently in that way as well.

Senator MCCONNELL. Mr. Bramstedt, I was going to come to you anyway. S. 1219 would not just force you to give up dead air, the public air waves, during which time someone else could transmit. It forces you to donate your studio, your transmission equipment, your personnel. The free-time mandate doesn't even allow you to cover your electric bill, does it?

Mr. BRAMSTEDT. No. And the term, looking at it as dead air, I hold that dead air certainly wouldn't have gone unused. It would be taking strategic inventory, perhaps between 6:00 and 10:00. That is at the highest demand period of the year. So it has multiple reactionary effects.

Senator MCCONNELL. I was going to get to that. The election just happens to fall at a terrible time of the year from your point of view. That is all the new fall programming, is it not?

Mr. BRAMSTEDT. True.

Senator MCCONNELL. Isn't November a sweeps month?

Mr. BRAMSTEDT. It is, absolutely.

Senator MCCONNELL. Could you explain the significance of sweeps month in terms of intensive program competition and advertising?

Mr. BRAMSTEDT. That is the four times of the year, typically February, May, July, and November, four weeks in each of those months, Nielsen has aggressive surveys across most of the TV markets measuring the performance of the TV stations. The performance from those reports really does dictate their financial success in many ways in the months that follow that. So that is the period in which the networks and the independent stations do their very best, putting their very best programming forward. That also drives up the demand for the programming on behalf of advertisers to place in there and reduces the supply. So it is always a very busy time, particularly during the November sweeps, because that leads into the big fourth quarter, right in the middle of the big fourth quarter of marketing.

Senator MCCONNELL. Let's take a prime time show. How many minutes in a prime time hour are allowed for ads?

Mr. BRAMSTEDT. Typically, in the network breaks across the country, typically 60, 90 seconds maybe.

Mr. SCHMIDT. For network programming, you are generally given only the adjacent—

Senator MCCONNELL. That was my next question. How much of that time do you get? I mean, a certain amount of that is network ad time. A certain amount you are allowed to sell. Let's take a typical hour of prime time TV. How much do you get to sell?

Mr. BRAMSTEDT. In a typical hour of prime time TV, the affiliates have, with the exception of Alaska and Hawaii, they are limited to 60, 90 seconds, 60 or 90 seconds right before the program starts and right in adjacency down in the middle, a mid

break, a portion. The rest of those commercials, which are most of them, are network in which the local affiliate—

Senator MCCONNELL. Okay. Let me make sure I have got this right. So you only get, assuming 30-second commercials, you only get to sell two?

Mr. BRAMSTEDT. Two, in some breaks three.

Senator MCCONNELL. Two or three local commercials in an hour of prime time TV. Those are your most expensive spots, I assume.

Mr. BRAMSTEDT. Per break, and there are usually two breaks.

Senator MCCONNELL. And so under this proposal, you would be required for the specified period of time to provide a 50 percent discount.

Mr. BRAMSTEDT. Fifty percent discount, and additionally it appears that the classification of time, which has a lot to do with price structure and where the flexibility to air them or not at all is also affected.

Senator MCCONNELL. And you have to provide an equal opportunity during that same period for the opponent, too, right?

Mr. BRAMSTEDT. Absolutely.

Senator MCCONNELL. So this is really a draconian proposal.

Mr. BRAMSTEDT. It would be very difficult to manage. Lowest unit rate as it is now is difficult. I have been training sales staff members for 20 years on lowest unit rate as it currently is written, and the eyes always roll, like this is really complicated. Then the next point they always make, if they have sales experience, is: Why do these people get these kinds of rates? And I explain that it is part of the public aspects of broadcasting, being a licensee.

But to go beyond what is currently set up, it has been shown to be difficult for broadcasters to understand. They work hard to do that, but it is difficult. To do anything even close to these ideas would be very, very difficult.

Senator MCCONNELL. Finally, let me say if we continue to operate on the assumption that all races will be included in this, which I think is an absolute certainty that that will be the case, in States like mine we have elections every year. So this isn't just a once-every-2-years phenomenon. It's an every-year phenomenon. So the stations that happen to be in a State where there are elections every year are going to be disproportionately, adversely impacted by this comprehensive broadcast discount, are they not?

Mr. BRAMSTEDT. Absolutely.

Senator MCCONNELL. And if you are lucky enough to be in a State where they only have elections every 2 years, and you are not on a border, you will come out a little better. What about a poor station that is on the border between two States, a multistate media market with every-6-months election? I forgot about the primary. Elections every 6 months, multistate media

market, those people are really going to be disadvantaged by this. It is capricious, is it not?

Mr. BRAMSTEDT. It is. That is the worst of all cases. And during a political year—well, let's assume we are correct that this would be broadened to all candidates. You would find, assuming that the equal access requirement wouldn't be put forth to State and local candidates, just as it is now for Federal candidates, I think what you would find with my station and others in my market is an incredible reduction of allowing these State and local candidates on the air.

I had an experience with that. Several years ago we allowed—it was about 10 years ago. We decided we wouldn't let the mayor and the assembly candidates run lowest unit rate. It was the time of the year that was very busy. We had regular election activity taking place anyway. And the candidates were very, very upset. And we went back and allowed them on the air.

But I think that you would find more interest on the part of broadcasters to limit it only to those candidates that have access under Federal law—in the current case, Federal candidates—which would have a real negative reaction on the part of the candidate.

Senator MCCONNELL. Yes, but you are not going to have that option because by the time this legislation passes, I guarantee you that Congress, being the Congress, it is not going to be limited to Federal races.

Mr. BRAMSTEDT. My only hope with that scenario is that currently local candidates don't have the reasonable access provisions. They have equal opportunity. Once you allow a candidate, a mayoral candidate, a State House candidate, to buy his or her opposition, it is the same amount of air time at that rate.

But I was assuming that, let's assume that with this legislation it goes on into the House and it stops there, as it relates to absolute reasonable access. Broadcasters would very much limit local and State candidates from access, which would be upsetting. Because every one of those spots under the LUR as it is structure here would lose—a broadcaster would lose money every time you ran the spot.

Senator MCCONNELL. Thank you, Mr. Chairman.

Mr. SCHMIDT. But if you extent access to State and local, I would just point out in just the last election, local elections in WAVE, which were 2 weeks ago, we had 50 races with over 200 candidates. I don't know where you can draw the line on reasonable access once you got below—

The CHAIRMAN. I am going to return to that very important point my colleague has raised when I regain my time, but now, Senator Pell, would you like to make some comments and ask some questions?

Senator PELL. I have a brief opening statement.

The CHAIRMAN. Yes, please.

Senator PELL. I thank you, and I congratulate you for your leadership in scheduling this series of hearings.

I am particularly pleased that the focus of today's hearing is on the subject of free broadcast time. This is an idea that I have embraced for many years. I believe that the provision of free media time to educate the electorate should be a basic condition of a grant of a license for commercial use of a segment of the broadcast spectrum. In other words, in return for the right to exploit a particular wave length, the station or the network would pay—or provide the cost, and the commercial use of that would be allotted to one of the two political parties.

I have sponsored legislation providing various schemes for free time grants for political campaigns for the past 10 years, and I remain hopeful that the concept will one day become law. Indeed, one of the main reasons I became an early cosponsor of the McCain-Feingold bill was the fact that, in addition to its many other strong points, it provides for free television time.

When I first introduced legislation providing for free media time in 1986, the idea was viewed as being quite far out of the mainstream, so much so that the bill was not taken seriously. But by 1993, the concept had gained enough momentum to attract 32 votes in the Senate when I offered it as an amendment to Senator Boren's Election Reform Act. So while the amendment failed to carry the day, the idea has come a long way.

The hearing today confirms the fact that it has matured even further. I am delighted we will hear from witnesses on both sides of the issue, which indicates that the concept is indeed being taken seriously.

I hope the committee will examine this concept closely—I am sure it will under the able chairmanship of Senator Warner—and consider carefully the various legislative solutions which are being proposed.

My recollection is that in our sister democracy, Great Britain, you cannot buy TV time, but it is allotted by the BBC.

Once again, Mr. Chairman, I applaud your leadership in scheduling these hearings and hope they will lead to an improvement in the electoral campaign process.

Thank you.

The CHAIRMAN. I thank you, colleagues. Any questions you have of this panel?

Senator PELL. No questions.

The CHAIRMAN. Thank you very much for your kind statement.

I would like to return to this very important subject raised by my colleague here. This is a little corny, but when I go back throughout my State and you get in the parade, you know, senior Senator is fine, but they say very politely, the mayor is going to go ahead of you, the sheriff is going to go ahead of you, and this fellow is running for the Board of Supervisors. And if for some reason I am able to get through, say, in legislation in the future,

some free time, this is going to aggravate my relationships with people all down the political line because they just think it is basically unfair.

This is a subject we have got to focus on very carefully. Is there any other comment on this subject?

Mr. SCHMIDT. Senator, I would also point out that our franchise is local, and as much as we appreciate the importance of the Senate and the House, we live with those people every day. And our stations want to keep those relationships strong, and this will attenuate our relationships with those people to favor the Federal relationships. And I think that would be bad for us and bad for our business and bad for our commitment to our local communities.

The CHAIRMAN. Any other comment?

Ms. CRAWFORD. I agree with Greg. I have also found that there are stations already, because of the atmosphere that is out there now, that are not allowing local candidates to buy time. Part of it, a large part of it, comes from the lawsuits, and again, these problems could have been taken care of during the campaign. They didn't have to appear afterwards. And the stations have just said I am not going to risk it. I try and do everything right, and I—having audited many of the stations myself for some clients—find they do try. They really are trying to do it according to the law, to the letter of the law.

The CHAIRMAN. Well, I am happy to give up my parade position because I don't mind going in the back. But I am not so sure I would want to share my free TV time with them. That is where the rub comes.

Now we will conclude this panel, and thank you very much.

Mr. BRAMSTEDT. Thank you.

Mr. SCHMIDT. Thank you.

Ms. CRAWFORD. Thank you.

The CHAIRMAN. You have greatly enlightened the Senate on your subjects, and you are well informed, and we are pleased to have you.

The CHAIRMAN. We will now have our second panel: Mr. Taylor, Mr. Barber, Mr. DeVore, Mr. Geller.

I am going to proceed to put a little information in about our distinguished panel. Paul Taylor is truly a scholar and indeed a pioneer, a courageous pioneer on the subject of new ideas. Perhaps this hearing today is a direct result of his initiatives in this particular area.

He is the Director of Free TV for Straight Talk Coalition, a group seeking to persuade television networks to donate free air time to the principal Presidential candidates for "talking head" presentations during prime time in the final month of the 1996 campaign. He was also a newspaper reporter for 25 years, the last 14 at the Washington Post, where he covered national political campaigns and social issues. He is the author of a book, "See How They Run", about the 1988 Presidential campaign.

Mr. DeVore is a Senior Partner in Davis Wright Tremaine's Seattle office. He chairs the firm's Communication and Media Law Department. He regularly represents media and advertising clients in First Amendment cases in the Supreme Court, Federal and State appellate and trial courts. In addition, he provides First Amendment counsel on content regulatory and legislative matters to national and regional print and broadcast media and to national advertisers.

Mr. Geller is a Communications Fellow with the Markel Foundation and in that capacity focuses on telecommunications policy issues and research. Mr. Geller is also a professor at Duke University. Most of his career was spent at the Federal Communications Commission, where he was appointed General Counsel, a position he held until September 1970, when he became Special Counsel to the Chairman of the FCC. Since then, Mr. Geller served as the Director of the Washington Center for Public Policy, research at Duke University, and as Administrator of the National Telecommunications and Information Administration, Chamber of Commerce.

Professor, I am not sure that I have a biography on you here, and I apologize. Why do you not give a little of your own biography as you lead off?

Mr. BARBER. It is on the back of the prepared testimony, so I will not bore you with the details. I am the Walt Whitman Chair of Political Science at Rutgers University and the Director of the Walt Whitman Center for the Culture and Politics of Democracy. I have written widely on democratic theory and practice.

The CHAIRMAN. Thank you, Professor.

I am going to ask Mr. Taylor if you would lead off. I will be right back. I am going to ask that my colleague take over for me.

TESTIMONY OF PAUL TAYLOR, DIRECTOR, FREE TV FOR STRAIGHT TALK COALITION, BETHESDA, MD; PROFESSOR BENJAMIN R. BARBER, WALT WHITMAN PROFESSOR OF POLITICAL SCIENCE, RUTGERS UNIVERSITY, NEW BRUNSWICK, NJ; HENRY GELLER, WASHINGTON, DC; AND P. CAMERON DEVORE, DAVIS WRIGHT TREMAINE LAW OFFICES, SEATTLE, WA

Mr. TAYLOR. Thank you, Mr. Chairman.

As you noted in your introduction, I spent 25 years as a newspaper reporter, most of them covering politics. I left earlier this year because I had grown disenchanted. I came to feel that there was something broken in the way political campaigns unfold on television, that journalism is partly responsible, and that the costs to society are large.

One can measure this breakdown in lots of ways—our low levels of voter participation, our high levels of cynicism, our unprecedented levels of national debt. The evidence has been piling up for the last few decades. When we allow our civic trust

to erode, we condemn our governmental and political institutions to mediocrity because we deprive our elected leaders of the mandate to make hard choices.

The seeds of this civic distrust are planted during political campaigns. More than anywhere else, they are planted on television. That is where we do our indispensable political business in this society. That is where the relationship between leader and citizen is forged. That is where the tone of the ongoing conversation of democracy is set.

Unfortunately, politics is waged on television mainly in 30-second attack ads, which are designed not to persuade your supporters to vote for you but to convince your opponent's supporters not to vote at all, and in 7-second sound bites, which are plenty long for the candidate who wishes to attack or to pander but far too brief for the candidate who wishes to explain that public policy choices usually involve compromise and often demand sacrifice.

The journalists who cover this stunted dialogue are obliged to report that it reeks of artifice, fakery, distortion, and half-truth. This, they do well, perhaps too well. Increasingly, their own cynicism is the lens through which they frame the story of politics and government.

One recent study by the Washington-based Center for Media and Public Affairs found that the content of the network television news reporting about the 1996 GOP Presidential primaries was even more negative than the content of the candidates' ads. Other academic studies spanning the past two decades have produced similar findings. Political journalists, especially on television, have become carriers as well as chroniclers of our national virus of distrust.

Citizens are thus confronted with the following bleak tableau in campaign after campaign: The politicians hate each other, the journalists hate the politicians, and everyone hates Washington. Small wonder that in Presidential elections, nearly half the eligible citizens do not bother to vote, or that in Congressional elections, where all these dysfunctions are further advanced, nearly two-thirds stay home.

I will discuss shortly how all this ties into campaign finance reform. First, let me take a moment to tell you what we are doing this year, because I hope the campaign discourse reform effort that I have been involved with will eventually dovetail with campaign finance legislation.

Earlier this year, I left the Washington Post and, along with Walter Cronkite, founded the Free TV for Straight Talk Coalition. We set out to try to persuade the television networks to voluntarily offer a few free minutes in the heart of prime time to the major Presidential candidates on alternating nights during the final month of the fall campaign. By airing these brief speeches in between the sit-coms, the idea is to let the candidates reach the biggest audience America assembles every night, an

audience disproportionately comprised of people with little interest in politics.

But instead of feeding these inadvertent political consumers the junk food they now get from campaigns on television, let us give them healthier fare. To accomplish this, let us attach one crucial format restriction to the free time. Let us insist that the candidates appear on screen the whole time—no surrogates, no journalists, no opponent, no unseen narrator, no tricky visual images, just the candidate talking directly to the citizens, the most straightforward and sacred transaction in a democracy.

Candidates could still do whatever they like with their paid commercials, so this simple format change would not automatically purge campaigns of attack politics, nor should it. Politics is not bean bag. It is a fight between your ideas and your opponent's. But let us make it a boxing match, not a pro wrestling charade.

This new format is designed to do just that. It offers the prospect of a running debate with an honest dialogue, honest in the sense that candidates are fully accountable for whatever they say about themselves or their opponent. Over time, you hope this kind of honest debate would diminish the payoff from the low blows launched in so many attack ads or from the smart-aleck voice favored by so many journalists on television.

Some have said this new format would be a windfall for the politicians because it would enable them to spin the poor defenseless voters in circles. I think they are dead wrong. If there is one thing Americans really do well, it is watch television. We get everything. Getting it is a badge of our post-modern sophistication. The television camera functions like an x-ray machine and we are the world's savviest lab technicians. I think this format is going to be pretty rough on the politicians, and I am certain the American people are not going to get duped.

Last week, in response to public pressure from our coalition, all the major networks offered free time this fall in a variety of formats. The good news was that all of them acknowledged there is something broken with politics on television. The bad news was none of them came forward with the right approach. They responded the way powerful institutions often do when confronted with the need to change. They changed in baby steps, just enough, they hope, to get the critics off their backs.

So now we have a hodgepodge of offers from the networks, none of which has the heft to transform the dreary dynamics of campaign discourse. Our coalition will keep up the pressure, and I am confident by this October, the networks will offer a coordinated approach that makes more sense for the citizens, the candidates, and the journalists.

What does all this have to do with campaign finance reform? Potentially, a great deal. I do not need to tell anyone seated in this room that the worst of the political discourse on television does not happen in Presidential campaigns but in State and

Congressional races. If we want systemic change to happen in campaign discourse, that is where we need to make it happen.

Our coalition's hope is that by road-testing this new candidate-always-on-screen format this fall in the Presidential race, we will create a model that can be adapted and adopted in future years to Senate and Congressional races.

Happily, the principal bipartisan campaign legislation currently under consideration, S. 1219, offers a natural fit between finance and discourse reform. The bill has many provisions, but at its core is a trade-off of voluntary spending limits in return for free or reduced-price television time.

Why not add the following provision? In all the air time a candidate is given under this bill, he or she must accept a candidate-always-on-screen format restriction. If candidates still wanted to air the more conventional, highly-produced attack ads, they could do so, but on their own dime. At least during the free time doled out under this bill, we would be raising the level of discourse.

I think the benefits of marrying discourse and finance reform will be large. To return to my opening thoughts, the reason we have so much gridlock in Washington and anger towards Washington in the rest of the country is that there has been a breakdown of trust in our political system. Campaign discourse and campaign finance are both heavily implicated in this breakdown. They should both be part of the repair. Thank you.

[The prepared statement of Mr. Taylor follows:]

PREPARED STATEMENT OF PAUL TAYLOR, FREE TV FOR STRAIGHT TALK
COALITION, BETHESDA, MD

My name is Paul Taylor. I spent 25 years as a newspaper reporter, most of them covering politics. I left earlier this year because I'd grown disenchanted. I came to feel that there is something broken in the way political campaigns unfold on television; that journalism is partly responsible, that the costs to society are large.

One can measure this breakdown in lots of ways—our low levels of voter participation; our high levels of voter cynicism; our unprecedented levels of national debt. The evidence has been piling up for the past few decades—when we allow our civic trust to erode, we condemn our governmental and political institutions to mediocrity. No one trapped in the vicious cycle can summon the courage to make hard choices.

The seeds of this civic distrust are planted during political campaigns. And more than anywhere else, they're planted on television. That's where we do our indispensable political business in this society. That where the relationship between leader and citizen is forged. That's where the tone of the ongoing conversation of democracy is set.

Unfortunately, politics is waged on television mainly in 30-second attack ads, which are designed not to persuade your supporters to vote for you but to convince your opponent's supporters not to vote at all; and in the 7-second sound bites, which are plenty long for the candidate who wishes to attack or to pander, but far too brief for the candidate who wishes to explain that public policy choices usually involve compromise and sometimes demand sacrifice.

The journalists who cover this stunted dialogue are obliged to report that it reeks of artifice, fakery, distortion and half truth. This they do well—perhaps too well. Increasingly, their own cynicism is the lens through which they frame the story of politics and government. One recent study by the Washington-based

Center for Media and Public Affairs found that the content of the network television news reporting about 1996 GOP presidential primaries was even more negative than the content of the candidates' ads. Other academic studies spanning the past two decades have produced similar findings. Political journalists, especially on television, have become carriers as well as chroniclers of our national virus of distrust.

Citizens are thus confronted with the same bleak tableau in campaign after campaign—the politicians hate each other, the journalists hate the politicians and everyone hates government. Small wonder that in presidential elections nearly half the eligible citizens don't bother to vote, or that in congressional elections—where all these dysfunctions are further advanced—nearly two-thirds stay home.

I'll discuss shortly how all this ties in to campaign finance reform. First let me take a moment to tell you what I'm up to this year, because I hope my campaign discourse reform effort will eventually dovetail with the legislation your committee is considering.

Earlier this year I left the Washington Post and along with Walter Cronkite founded an organization with a big mouthful of a name, The Free TV for Straight Talk Coalition. We set out to try to persuade the television networks to give a few free minutes, in the heart of prime time, to the presidential candidates this fall to state their positions on alternating nights during the final month of the campaign. So, for example, you might have Clinton making a short presentation on a Monday night at 8:58 PM; Dole on Tuesday at the same time, Clinton again on a Wednesday, etc. If there's a substantial independent candidate, he or she gets time too.

By airing these brief speeches in between the sit-coms, the idea is to enable the candidates to reach the biggest audience America assembles every night—an audience disproportionately comprised of people who don't vote. But instead of feeding these inadvertent political consumers the junk food they now get from campaigns on television, let's give them a heartier, healthier fare.

Here's where a simple—but I believe crucial—format restriction comes into play. Let's insist that the candidate who gets this free time appear on screen the whole time. No surrogates. No journalists. No opponent. No unseen narrator. No tricky visual image. Just the candidate, talking straight to the sovereign citizens—the most scared transaction in a democracy.

Candidates could still do whatever they like with their paid commercials, so this simple format change wouldn't automatically purge campaigns of attack politics. Nor should it. Politics ain't beanbag. It's a fight between your ideas and your opponents. What bothers so many citizens about television-era campaigns, I think, is that the fight resembles pro wrestling rather than boxing. This new format is designed to reverse that. I offer the prospect of a running debate with an honest dialogue—honest in the sense that candidates are fully accountable for whatever they say about themselves or their opponent. Over time, you hope that this kind of honest debate would diminish the payoff from the low blows launched in so many attack ads, or the smart aleck voice favored by so journalists on television.

Some critics have said this new format would be a windfall for politicians because it would enable them to spin the poor defenseless voters in circles. I think they're dead wrong. If there's one thing Americans really do well, it's watch TV. We "get" everything—"getting it" is a badge of our post-modern sophistication. The television camera is like an x-ray machine, and we're the world's savviest lab technicians. I think this format is going to be pretty tough on the politicians. And I'm certain the American people aren't going to get duped.

Our coalition has urged the television networks to come forward voluntarily this year and offer the time in the manner we've proposed. Last week all the major networks offered free time this fall in a variety of formats. The good news was that in so doing, all of them acknowledged there's something broken with politics on television. The bad news was that none of them came forward with the right approach. They responded the way powerful institutions often do when confronted with public pressure to change. You change in baby steps—just enough, you hope, to get your critics off your back. We now have a hodge-podge of small offers on the table from the networks, none of which will transform the dreary

language of campaign politics. But our coalition will keep putting public pressure on the networks, and I'm confident that by this October they will offer a more coordinated approach that makes sense for the citizens, the candidates and the campaign.

Now, what does all of this have to do with campaign finance reform? Potentially, a great deal. I don't need to tell anyone seated in this room that the worst of the political disclosure on television doesn't happen in presidential campaigns—where the journalistic scrutiny is so intense—but in state and congressional races. If we want systemic change in campaign disclosure, that's where we need to go.

Our coalition's hope is that by road-testing this new candidate-always-on-screen format this fall in the presidential race, we can create a model that would be adapted and adopted in future years in Senate and Congressional races.

Happily, the principal bi-partisan campaign reform bill currently under consideration by the Senate, S. 1219, offers a natural fit between finance and discourse reform. The bill has many provisions, but at its core is a trade-off: if a candidate accepts a voluntary spending limit, he or she is rewarded with free and/or reduced price television time.

Why not add the following provision to the bill—in all the air time a candidate is given under this bill, he or she must accept a candidate-always-on-screen format restriction? If candidates still wanted to air the more conventional, highly produced attack ads, they could do so, but on their own dime. But at least during the free time doled out under this bill, let's try to clean up the discourse.

I think the benefits of marrying discourse and finance reform will be large. To return to my opening thoughts, the reason we see so much gridlock in Washington and so much anger at politics in the rest of the country is that there's been a breakdown of trust in our political system. Our current system of campaign discourse and finance are both heavily implicated in this breakdown.

We are not a nation with strong partisan political institutions. We don't have well-oiled party machines that knock on people's doors and urge them to vote. We rely on our campaign s=discourse to attract citizens to the public square. That's a heavy burden; at the moment we're not meeting it. Instead of drawing people in, our television-era campaigns are driving them away.

There are real costs involved here, beyond crummy campaigns. My oldest child turned 21 last Thursday. On the day he was born, our nation was still counting its accumulated debt in the billions. Now we measure it in the trillions—five, to be exact. He and his younger brother and sister will spend their entire working lives paying off the bills my generation has fobbed off on them. That makes me feel lousy as a citizen and worse as a parent. I think virtually all of America's parents feel the same way. Its a big reason everyone's so mad at Washington.

The hope for change lies not in boycotting politics—as so many citizens do each time an election rolls around—but in repairing politics. If we marry campaign discourse and finance reform, we can start to fix politics in the place it most needs fixing. We ought to always remember that our system of government and politics is merely the most successful, most envied, most emulated ever devised. We ought to free it up to do its best, not its worst. And we ought to start right away. Thank you.

Senator PELL. I very much appreciated your presentation. Myself, speaking as an individual member of the committee, I was in substantial agreement with you.

I believe Professor Barber would be next.

**TESTIMONY OF BENJAMIN R. BARBER, WALT WHITMAN
PROFESSOR OF POLITICAL SCIENCE, RUTGERS UNIVERSITY,
NEW BRUNSWICK, NJ**

Mr. BARBER. Good morning, Senator. My name is Benjamin Barber, and though I appear before you this morning as a scholar

and a student of democracy, it is above all as an American citizen that I am here, and I want to address you as fellow citizens as well as distinguished Senators.

The distortion of the democratic process in America by money is a problem nearly every American recognizes but for which no American has found ready solutions. Most efforts to remedy abuses have focused on curtailing spending and limiting campaign contributions. But the Supreme Court's decision in *Buckley v. Valeo* has exempted individuals who self-finance their campaigns from regulations while a variety of ruses that bypass direct support to candidates and thus bypass the rules regulating direct support has allowed partisan backers to continue to influence elections indirectly with massive contributions.

There is another approach to campaign finance reform, however, that works not on contributions but on the costs of campaigns, and by focusing on an unused public right-of-way, promises relief to candidates and their constituents. In this era of media-dominated elections, between 60 and 70 percent of campaign costs—and even the opponents of the bill admit up to 40 percent, though those numbers can be contested—goes to the purchase of television time in preparation for the use of that television time by candidates.

If those costs could be reduced or even eliminated and free air time made available to all legitimate candidates for office, candidates would have to raise far less money to run and those with money would be far less influential in the electoral process. At the same time, the quality of political deliberation could also be improved.

Yet, as things stand, and here we come to the core of my testimony, candidates must purchase television and radio air time, and having done so, are often drawn into the negative advertising, sound bit politics, and the debasing of debate. Thanks to the public interest lobbying of groups like Paul Taylor's, the networks have volunteered some free time on their own terms recently, but a voluntary program affords neither ample time nor a reliable or worthy precedent.

How can it be that public airwaves that belong rightfully to the American people as a public resource are leased by the people's representatives, the Federal Government, this Congress, to private vendors, who then sell back that resource to the American people for exorbitant sums during democratic elections where the people most need access to what, after all, belongs to them in the first place? Why must public interest lobbies like Paul Taylor's remonstrate with the networks to give back to the American public a morsel of what, in principle, it already owns outright?

How can licensees speak of candidate "usurping broadcast time"—I heard that phrase again this morning—when, as a citizen, I must say I find that use of the word "usurp" ironic and more than a little offensive to the spirit of democracy. The

Federal Communications Act of 1934 made plain enough that broadcasters who receive public licenses retain the responsibility for the public interest upon which their tenure as broadcast licensees depends. Why has that obligation been allowed to atrophy? That is the question before this committee.

The plain fact is, Americans and their government retain an easement on their airwaves, a right to use them for civic and public educational purposes as they see fit, and when it best suits their purposes, say, in prime time. This is not a question of big government regulating the private market for bureaucratic ends. It is a question of the American people having a right to use their public airwaves as they see fit for civic purposes without having to pay user fees to the private trustees to whom they have loaned those airwaves.

Like air and water, the airwaves belong to the public at large. To breathe, we need air and no one has a right to sell it to us. To flourish as a democracy, we need the airwaves to communicate and dialogue with one another and no private vendor has a right to charge us to do so.

There are two legitimate worries about such legislation, questions of costs and questions of constitutionality that have been raised this morning, and let me briefly address both.

With respect to the costs this legislation may impose, I have to say I am a great believer in capitalism. I can appreciate that broadcasters worry about the costs they may bear as public trustees, but my robust belief in capitalism leads me to think that if current licensees are unhappy, there are out there in this great free American market potential licensees willing to live with and perhaps even anxious to assume such costs. Perhaps it is time for the Congress to test that market.

A great Senator and a distinguished member of this committee recently spoke in reference to the digitalization of broadcast spectra that will yield room for many more broadcasters in the future. He spoke about how he feared what he called the biggest giveaway of the century. If Senator Bob Dole worries about future giveaways, then perhaps this committee has a right to worry about past giveaways. If current licensees are not happy with the terms of their leases, perhaps the committee ought to consider opening the relicensing of the airwaves to the market.

The second worry, and Senator Warner mentioned it in his introductory comments, is about the First Amendment impact of such a plan. There, I think we must remember that statutes of proven constitutionality already require that broadcasters serve the "public interest, convenience, and necessity". As private holders of a public resource, broadcasters are not the bearers of private property but public trustees who have a fiduciary responsibility to their viewers and listeners, in other words, to the citizens of America.

In the words of Justice Byron White, "No one has a First Amendment right to a license or to monopolize a radio frequency. It is the right of the viewers and listeners, not the right of the broadcasters, that is paramount." When we insist on the public's right to an easement on the airwaves, we do not abridge but we enhance the force of the First Amendment.

Now, it is true, as Senator Warner has said, like so many issues in this domain, this one divides scholars and may divide jurists, as well. Given this, it seems to me, however, that under the separation of powers, it is this chamber's duty to send up a bill that meets its view of appropriate civic and judicial standards and then let the courts play their appropriate constitutional role, should they be called on to do so.

The CHAIRMAN. Could I just spread a little bit on that very important point? But there is some line in there that we should not cross over, if we know in strong views that it is unconstitutional. If there is a reasonable doubt, then I think it is our burden to send it to the other branch of government, the Federal Judiciary. But somewhere in there is a line. Do you agree or disagree with me?

Mr. BARBER. I do agree with you, there certainly is a line. All I worry about is that we do not allow hypothetical judicial interpretations, possible court cases, to chill or even preempt the work of the legislature.

The CHAIRMAN. You and I have an agreement on that, then.

Mr. BARBER. So you and I do agree on that.

The CHAIRMAN. I am glad that you brought that refinement out. It is an important one.

Mr. BARBER. There is also, I think, a collateral advantage to repossessing the airwaves during election periods for purposes of civic and political education, of debate and deliberation. It allows us to set standards for such education, debate, and deliberation that can be the condition for free usage by candidates who could thus be constrained to avoid sound bite ads, negative spots, and MTV-style salesmanship that have become the stuff of our politics.

Although a bill providing for free time will be extremely useful, even if it does not set such standards, and the present legislation does not except rather minimally, such legislation offers an ideal opportunity to do so, and thus, in conjunction with less expensive, more accessible campaigns, could also have a powerfully beneficial effect on the civic quality and deliberativeness of our elections. For the primary purpose of free air time, as well as its paramount justification, is civic education—the right of voters to learn about and be able to fairly evaluate the claims of their fellow citizens running for office.

The modest reform envisioned by the pending legislation, by claiming public rights that are already present, and making good on a promise of trusteeship that has too often been neglected, will not only contribute significantly to remedying campaign

finance abuses but can also enhance the quality of our democratic processes. In these times of civic alienation, declining public trust, and cynicism about government, nothing, I think, could be more important. Thank you very much, Senator.
[The prepared statement of Mr. Barber follows:]

PREPARED STATEMENT OF BENJAMIN R. BARBER, THE WALT WHITMAN CENTER FOR THE CULTURE AND POLITICS OF DEMOCRACY, RUTGERS UNIVERSITY, NEW BRUNSWICK, NJ

RECLAIMING THE PUBLIC AIRWAVES

The distortion of the democratic process in America by money is a problem nearly every American recognizes but for which no American has a ready solution. Most efforts to remedy abuses have focused on curtailing spending and limiting campaign contributions. But the Supreme Court's decision in *Buckley v. Valeo* (1976) has exempted individuals who self-finance their campaigns from regulation while a variety of ruses that bypass direct support to candidates and thus bypass the rules regulating direct support has allowed partisan backers to continue to influence elections indirectly with massive contributions.

There is another approach to campaign finance reform, however, that works not on contributions but on the costs of campaigns and, by focusing on an unused public right of way, promises relief to candidates and their constituents. In this era of media dominated elections, between 60 and 70 percent of campaign costs go to the purchase of television time by candidates. If those costs could be reduced or even eliminated, and free air time made available to all legitimate candidates for office, candidates would have to raise far less money to run and those with money would be far less influential in the electoral process. At the same time the quality of political deliberation could be improved.

Yet as things stand, candidates must purchase television and radio air time and, having done so, are often drawn into negative advertising, soundbite politics and the debasing of debate. Thanks to the public interest lobbying of Paul Taylor's group (to which I belong), the networks have volunteered some free time on their own terms, but a voluntary program affords neither ample time nor a worthy precedent. For how can it be that the "public airwaves" that belong rightfully to the American people as a public resource are leased by the people's representative (the Federal Government) to private vendors, who then sell the resource back to the American people for exorbitant sums during the democratic elections where the people most need access to what after all belongs to them? Why must public interest lobbies remonstrate with the networks to give back to the American public a morsel of what in principle it owns outright? The Federal Communications Act of 1934 made plain enough that broadcasters who received public license retained a responsibility for the "public interest" upon which their tenure as broadcast licensees depended. Why has that obligation been allowed to atrophy?

The plain fact is Americans (and their government) retain an easement on their airwaves, a right to use them (a right of way) for civic and public educational purposes as they see fit and when it best suits their purposes (in prime time). This is not a big question of "big government" regulating the "private market" for bureaucratic ends. It is a question of the American people having a right to use their public airwaves as they see fit for civic purposes, without having to pay user fees to the private "trustees" to whom they have loaned those airwaves. Like air and water, the airwaves belong to the public at large. To breathe, we need air, and no one has the right to sell it to us. To flourish as a democracy, we need the airwaves to communicate and dialogue with one another, and no private vendor has a right to charge us to do so. It is time to recognize the easement or right of way Americans retain on the public airwaves and to use it as a remedy for the abuses of the current campaign finance system.

Those who worry about the First Amendment impact of such a plan, must remember that statutes of proven constitutionality already require that broadcasters serve the "public interest, convenience and necessity," (47 USC 309a). As

private holders of a public resource, broadcasters are not the bearers of private property but public trustees who have a fiduciary responsibility to their viewers and listeners—to the citizens of America. In the words of Justice Byron White, "No one has a First Amendment right to a license or to monopolize a radio frequency. It is the right of the viewers and listeners, not the right of the broadcasters, that is paramount." (*Red Lion v. FCC*, 1964). When we insist on the public's right to an easement on the airwaves, we do not abridge but enhance the force of the First Amendment.

There is a collateral advantage to repossessing the airwaves during election periods for purposes of civic and political education, of debate and deliberation. It allows us to set standards for such education, debate and deliberation that can be the condition for free usage by candidates who could thus be constrained to avoid soundbite ads, negative spots and MTV style salesmanship. Because candidates are free to avail themselves of free time or not as they choose, these conditions would impinge on their freedom of speech. Although the current legislation as proposed sets only minimal conditions, the deliberateness, fairness and civic educational potency of political debate could be favorably influenced by, for example, making free time conditional on a commitment by candidates to:

- appear alone on the air, without benefit of props, pictures or interlocutors, to discuss their ideas and programs;
- appear for a minimum of 2 or 3 minutes, at which length sound bites and slogans would be less effective, and where reasoned and sustained argument would be more advantaged;
- agree to avoid 'negative' advertising and to submit copy to an independent board that would define "negative" and evaluate appearances accordingly;

Although a bill providing for free time will be extremely useful even if it does not set such standards (and the legislation on the table does not, except extremely minimally), such legislation offers an ideal opportunity to do so and thus, in conjunction with less expensive, more accessible campaigns, could also have a powerfully beneficial impact on their civic quality and deliberativeness. For the primary purpose of free air time (as well as its paramount justification) is civic education: the right of voters to learn about and be able to fairly evaluate the claims of their fellow citizens running for office.

The modest reform envisioned by the pending legislation, by claiming public rights that are already present and making good on a promise of trusteeship that has been too often neglected, will not only contribute significantly to remedying campaign finance abuses, but can also enhance the quality of our democratic processes. In these times of civic alienation, declining public trust, and cynicism about government, nothing could be more important.

[An appended report of The Walt Whitman Center for the Culture and Politics of Democracy by Research Associate Mark Button entitled, "Reclaiming the Public Airwaves" is maintained in the Committee's files.]

The CHAIRMAN. That was a very good statement. Thank you. I apologize for being absent. You may not be aware, but there is quite a story working right now all across America about what Mr. Dole may or may not do between two and three today. Some of us have been called to the telephone on that.

Mr. Geller?

TESTIMONY OF HENRY GELLER, ESQ., WASHINGTON, DC

Mr. GELLER. Thank you, Mr. Chairman, for this opportunity to testify. I am not an expert on campaign reform, policy, law, or constitutionality. What I am going to address is the constitutionality of the provisions in S. 1219 that deal with free

time and the 50 percent reduction from the point of view of the Communications Act law.

I believe they are constitutional. I hope to be of help to the committee by going over what the First Amendment standard is. I reached that conclusion based on what Senator Ford laid out today, not what the law ought to be, but what it is based on precedent. The precedents that I would cite go back to 1943, to the *NBC* case, to the 1969 *Red Lion* case that Professor Barber quoted from, and finally and very important, the 1994 *Turner* case that was just decided.

I am afraid what I am going to say now is a little dull because it is just law, but—

The CHAIRMAN. We will be happy to analyze it, and we very much desire to have submissions like this. I have encouraged every panel to participate to the extent they have a knowledge or an interest or otherwise, because I feel this is a central issue as the committee works on this.

Mr. GELLER. You are right.

The CHAIRMAN. If you could just sort of outline in general terms, then we will go over the details very carefully.

Mr. GELLER. I will outline it now. The *Turner* case set out what is the traditional First Amendment jurisprudence. If you have a government regulation that is content-based, then the government has the rather heavy burden of showing that that regulation is narrowly tailored to a compelling governmental interest. It is called strict scrutiny. That is the highest standard.

The second one, still heightened First Amendment scrutiny, but less, is called the intermediate test, and that is where the government regulation is content-neutral but it has an incidental effect on speech. In that case, what the government has to show is that there is an important or substantial interest, that this incidental effect is not meant to suppress any speech, and finally, that the First Amendment restriction on speech is no more than is essential to further that governmental interest.

The reason why I go over this is none of that is applicable here to broadcasting. *Turner* says that broadcasting does not come within that traditional First Amendment jurisprudence. It has its own unique jurisprudence and that is very liberal. All you have to show is the rational test, reasonably related to the public interest, and it is constitutional.

I think you will hear from Mr. DeVore that he believes that broadcasting does come under the intermediate test that I gave you. I think that is not so. You will not find it in *Red Lion*, and I think *Turner* shows that it is not so. The reason why it does is that *Turner* involves the constitutionality of the cable "must carry" provision. The lower court used that intermediate test. The government did not like that, and on appeal to the Supreme Court, the government said, use the *Red Lion* rational test, this reasonable, very liberal one. The Supreme Court said, no, that we

are not going to extend *Red Lion* beyond broadcasting. Then they went on and used the intermediate test.

So what I say is that, based on that, the law here is clear. The Court did not say to the government, why are you arguing for the broadcast test if that test is intermediate—the test that was below? What the Court said is, no, the broadcast test is not intermediate. It does not come within the traditional First Amendment jurisprudence. It has its own test and it is the *Red Lion* one.

Incidentally, *Red Lion* is still the law. *Turner* said that while it has been much criticized from the very beginning, it remains our law, and the law we are going to apply. That means that you have to find out then whether or not the regulations here, which are content regulations, are reasonable.

One other thing that is raised in the NAB paper and that is they argue that there is no more scarcity. But the scarcity as laid out in the cases, including in *Turner*, is not one that is compared to other media. All it is is that more people want to broadcast than there are available channels. That is the reason for it. That was true in *Red Lion* and it is true today. It is indisputable that in the relatively large market, there are no frequencies or channels open. If you open one, you get a score of applicants.

So you still have *Red Lion* applicable here. If that is so, your question on this free time and the 50 percent reduction is, is it reasonably related to the public interest? And on that, there is a 1981 case, *CBS*, which involved Section 312(a)(7) of the Communications Act. That section is the one that gives reasonable access for candidates for Federal office. The broadcasters argued in the Supreme Court that as applied by the Commission, it was unconstitutional. The Court held it was not, that it made a significant contribution to an informed electorate. Therefore, it was reasonably related to the public interest.

If you look at these provisions, they are limited, just as the 1981 case provision is limited. They make a reasonable contribution. What you have here is campaign reform. In connection with that, Congress would be saying, we want an amount of free time. We want the 50 percent reduction in order to assist in informing the electorate. Under the liberal standard of *Red Lion*, that is, I believe, constitutional. It is limited. It is 15 minutes to a station and—and this is very important—if it should impact some station adversely, if there is significant hardship, it can be waived. So what you have here is not facially unconstitutional.

What I have said obviously also goes to the “takings” aspect, because when the argument is made that this is taking private property and unfairly burdening a person and it ought to be spread among all the public, it stands the public trustee regulatory scheme on its head. The Supreme Court said in that 1981 case that what you have here is that the broadcasters are given the free and exclusive use of a very scarce part of valuable

public domain and with it comes enforceable obligations. The obligation here is the one that they have to make this contribution to the informed electorate.

Finally, I want to end up with what I think is an overarching point here, and that is that if you accept the scarcity arguments that are put forth here and the taking argument, then you really have blown out the entire public trustee scheme. You have blown out the requirement for children's television, for reasonable access, for community issue-oriented service. If there is no scarcity, you cannot make the broadcasters be public trustees. If that is so, then what you have to consider is what does that mean?

One of the things it means is that the NAB cannot have it both ways. When the government went to impose a significant spectrum usage fee—it was \$5 billion—the NAB opposed that saying, "Wait a moment. We have a duty to operate in the public interest, to be a public trustee. We have accepted that social compact, and if you tax us that way, all bets are off."

The NAB also points out that you should not apply auctions to them, because if you do, you are undermining the compact. They now stand outside the auction process.

My point is, they cannot have it both ways, and if you accept their argument about scarcity not being there anymore and the other arguments, you ought to get on with spectrum usage fees, and with auctions for broadcast.

There was a question raised this morning about a court test, and I would leave you with a question on that. Why does the NAB not bring a court test to overrule *Red Lion*? Why do they not say there is no scarcity anymore, this is a taking, it is not necessary, look at the explosion of video outlets? The answer is—I am afraid that they would lose it, but the answer is, they do not want it. They do not care about the First Amendment. They care more about making the arguments here. I would challenge them to bring that suit and I would welcome that suit. Thank you.

[The prepared statement of Mr. Geller follows:]

PREPARED STATEMENT OF HENRY GELLER, ESQUIRE, WASHINGTON, DC

My testimony is directed solely to the constitutionality of Sections 102 and 103 of S. 1219. Section 102 would afford 30 minutes of free broadcast time in the general election to an eligible Senate candidate from broadcast stations within the State or an adjacent State. Section 103 would reduce the charges of a television broadcast station to an eligible Senate candidate during specified 30 and 60 day periods to 50 percent of the lowest charge of the station for the same amount of time on the same date. I shall not discuss here several significant details of these sections, and instead will focus on the question of the constitutionality of provisions which have the above thrust. For reasons stated below, I believe that the provisions along the above lines would be held constitutional by the courts in light of long established precedent.

The broadcast regulatory scheme in the Communications Act of 1934 is based on a public trustee concept. Radio is inherently not open to all. The number of people who want to use spectrum, and in particular to broadcast, exceeds the

number of available frequencies or channels. Consequently, Congress decided that the government should allocate the radio spectrum for specific uses and award permits in order to prevent engineering chaos. As the Supreme Court stated in the seminal *Red Lion* case,¹ v. FCC, 395 U.S. 367, 390-91. the government could have required each frequency to be shared on a daily, weekly or other basis. Instead, Congress developed a system where short-term broadcast licenses are awarded to private entities who volunteer to serve the public interest as fiduciaries for all those who were kept off the air by the government.² These licensees must demonstrate to the Federal Communications Commission (FCC) that they have met the public interest standard, thus warranting renewal for another term.

This scheme necessarily involves content regulation. While the FCC is not to censor, a licensee can be called upon to demonstrate to the agency that it has served as a local outlet by presenting community-issue oriented programming.³ It must afford equal broadcast opportunities to candidates and reasonable access to federal candidates for elective office.⁴ Television broadcasters are required to serve the educational and informational needs of the child audience, including with programming specifically designed to do so.⁵ See *Turner Broadcasting System, Inc. v. FCC*, 114 S.Ct. 2445, 2462-63, n.7, where the Court noted these and other "content restraints" imposed by statute and FCC regulation.

The scheme thus implicates First Amendment concerns, and, as the Supreme Court stated,⁶ calls for "a delicate balancing of competing interests" —the role of the government as "guardian of the public interest" and the role of the broadcast licensee as a "journalistic 'free agent.'" The Court there stated (*ibid.*):

A broadcast licensee has a large measure of journalistic freedom but not as large as that exercised by a newspaper. A licensee must balance what it might prefer to do as a private entrepreneur with what it is required to do as a "public trustee." To perform its statutory duties, the Commission must oversee without censoring . . .

In the seminal *Red Lion* case, the Supreme Court sustained the constitutionality of the public trustee scheme in the context of the fairness doctrine and specific rules implementing that doctrine.⁷ The Court based its decision on the physical scarcity of frequencies which then existed and, as I shall show, persists today in all but the very smallest markets. The Court found "no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all." The goal of the First Amendment, the Court stated, is to "preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether by the government itself or a private licensee." The Court indicated that "[i]t is the right of viewers and listeners, not the right of the broadcasters, which is paramount." 395 U.S. at 390.

In the more recent *Turner* case, the Court again took up the issue of *Red Lion*, this time in the context of whether its First Amendment standard should be applied to cable television regulation. In declining to so extend *Red Lion*, the Court stated (114 S.Ct. at 2456-57):

. . . It is true that our cases have permitted more intrusive regulation of broadcast speakers than of speakers in other media. . . The justification for our distinct approach to broadcast regulation rests upon the unique

¹ *Red Lion Broadcasting Co.*

² See Sec. 309(h), providing that every license specify that it does not vest any right in the use of the frequency beyond its term.

³ See, e.g., Revision of Programming and Commercialization Policies, Report and Order, 98 FCC 2d 1076, 1077, 1091-92 (1984) (TV stations); 84 FCC 2d 968, 977-83 (1981) (radio stations).

⁴ 47 U.S.C. Sec. 315(a), 312(a)(7) (1976).

⁵ 47 U.S.C. Sec. 303(b)(a)(2) (Supp. IV 1992).

⁶ See *CBS v. DNC*, 412 U.S. 94, 117-18.

⁷ The doctrine required broadcasters to devote a reasonable amount of time to airing controversial issues of public importance, and to do so fairly by affording reasonable opportunity for the discussion of conflicting viewpoints. *Red Lion*, 395 U.S. at 377. The FCC has since eliminated the doctrine but retained the personal attack and political editorializing rules involved in *Red Lion*. See *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert denied*, 110 S. Ct. 717 (1989).

physical limitations of the broadcast medium . . . [case citations omitted]... As a general matter, there are more would-be broadcasters than frequencies available in the electromagnetic spectrum. And if two broadcasters were to attempt to occupy the same frequency in the same location, they would interfere with one another's signals, so that neither could be heard at all. . . . The scarcity of broadcast frequencies thus required the establishment of some regulatory mechanism to divide the electromagnetic spectrum and assign specific frequencies to particular broadcasters. . . . ("The fundamental distinguishing characteristic of the new medium of broadcasting is that broadcast frequencies are a scarce resource [that] must be portioned out among applicants"). . . . In addition, the inherent physical limitation on the number of speakers who may use the broadcast medium has been thought to require some adjustment in traditional First Amendment analysis to permit the Government to place limited content restraints, and impose certain affirmative obligations on broadcast licensees. *Red Lion*, 395 U.S. at 390. . .

Significantly, the Court's observations in *Turner* conclude with the statement that "[a]lthough courts and commentators have criticized the scarcity rationale since its inception [fn. omitted], we have declined to question its continuing validity as support for our broadcast jurisprudence, . . . and see no reason to do so here." 114 S.Ct. at 2457.

Some commentators have argued that the scarcity rationale is no longer applicable: They point to large increases in the number of broadcast outlets—over 11,500 broadcast radio stations¹ and close to 1,600 TV stations; they compare the number of broadcast outlets to daily newspapers; they point to the large number of video channels provided by cable television to 65 percent of the nation's TV households or by Direct Broadcast Satellites or other distribution systems coming on stream. But none of these considerations undermine the scarcity rationale for broadcast regulation. As the Supreme Court has made clear in *Red Lion*, the key comparison is the number of requests for broadcast frequencies with the number of frequencies available. Indisputably, this same scarcity exists today and will for some time. In the large markets where the bulk of the U.S. population live, no frequencies are open. An open frequency in such a market would attract a plethora of applicants.² Broadcast stations in the large markets are transferred at very large sums,³ reflecting the scarcity value of the underlying license (e.g., a noncommercial UHF station in New York City was sold for \$207 million).

I recognize with others that the situation will undoubtedly change drastically at some point in the next century when the digital revolution over many transmission paths has fully taken hold. Indeed, in such an environment it may be impossible to distinguish between all the digital purveyors of information, and terms like broadcaster, newspaper, multichannel distribution system, etc., may have little or no meaning. But we are not at such a stage now nor we will be in the next decade. So the constitutional basis for the unique broadcast regulatory structure remains valid. In that respect, I am also not addressing here whether as a matter of Congressional policy, a new or revised regime should be instituted.⁴

This then is the crucial constitutional background for considering content regulation in the broadcast field. Regulation such as the Children's Television Act's requirement of specifically designed educational fare or the requirement of access for federal candidates is clearly content based. For while the regulation is viewpoint-neutral, it does regulate speech based on governmental "favoritism" for the particular content category over others that the speaker might prefer. See *Turner*, 114 S.Ct. at 2458–59. Thus, the broadcaster might well want to present

¹ This argument ignores the fact that there were roughly 7,000 broadcast radio stations in 1969 when *Red Lion* was decided.

² See, e.g., S. Rept. No. 100–34, 100th Cong., 1st Sess., on S. 742 at 21–23; H. Rept. 100–108, 100th Cong., 1st Sess., at 13–19.

³ See *Broadcasting & Cable Mag.*, March 11, 1996, at 8 ("... radio and TV [station sale] prices [are] running high ...").

⁴ See H. Geller, 1995–2005: Regulatory Reform for Principal Electronic Media, the Annenberg Washington Program, Nov. 1994.

straight cartoons rather than educational fare because it garners a much larger audience at a much lower programming cost; so also the broadcaster might not want to disrupt its entertainment schedule to present candidates for federal office. In both instances, there is an interference with editorial autonomy (and a reduction in broadcaster revenues).

If such broadcast regulation were to come within traditional First Amendment jurisprudence, the government would have the heavy burden of showing that this content-based regulation met the strict scrutiny test—that is, the regulation must be narrowly tailored to meet a compelling state interest. See *Turner*, 114 S.Ct. at 2478 (O'Connor, J., dissenting).

But as noted before, broadcast regulation does not come within the traditional First Amendment jurisprudence, but rather the more liberal standard of *Red Lion*. Whatever the broadcaster might prefer as a "private entrepreneur" must be balanced against what is required as a "public trustee." Thus, if the regulation is reasonably related to that public trustee duty, it is permissible under the First Amendment (and also the "takings" facet of the due process clause).¹

The critical issue here therefore is whether the provisions in Section 102 and 103, calling for a very limited amount of free time for Senate candidates and a 50 percent reduction in the lowest rate charged, are reasonably related to the public interest standard, and thus facially constitutional. I believe that they clearly are. Here again, there is a Supreme Court case that is directly in point—the 1981 *CBS, Inc. v. FCC* case, 453 U.S. 367 (1981), that considered the constitutionality of an FCC action interpreting the access requirement of section 312(a)(7) for candidates for federal office. The Court stated (453 U.S. at 396):

... We have recognized that "it is of particular importance that candidates have the . . . opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day." *Buckley v. Valeo*, 424 U.S. 1, 52-53 (1976). Indeed, "speech concerning public affairs is . . . the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-76 (1964). The First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971). Section 312(a)(7) thus makes a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process.²

The foregoing is equally applicable to the provisions of Section 102 and 103 of S. 1219. The 30 minutes of free time and the 50 percent reduction in the lowest rate charged will surely make a significant contribution to the candidate's ability to inform the public and thus to an informed electorate, so vital to the proper functioning of a democracy. The provisions are viewpoint neutral, and do not favor any particular party or person. They are not unduly burdensome, since a candidate cannot request more than 15 minutes of free time from any one station (Sec. 102(c)(2)(C)), and the FEC is directed to exempt a licensee who establishes "that such requirements would impose a significant hardship . . ." (Sec. 102(c)(4)(B)).

As to the reduction, there is no indication that cutting the lowest charge by an additional 50 percent during the limited periods involved in the two years when there are Senate campaigns would impoverish television stations (although I do suggest that the FEC should have the same right to exempt, upon a showing of significant hardship, for this as it would be able to do for the free time requirement). Of course it will cut into revenues and thus profits, as will the provision of the 15 minutes free time. But clearly television broadcast stations, which are

¹ See *NBC v. U.S.*, 319 U.S. 190, 226-27 (1943).

² To the same effect, see S. Repl. No. 92-96, 92d Cong., 1st Sess., on Sec. 312(a)(7), at 28 (1971): "The presentation of legally qualified candidates for public office is an essential part of any broadcast licensee's obligation to serve the public interest, and the FCC should continue to consider the extent to which each licensee has satisfied his obligation in this regard in connection with the renewal of his broadcast license...."

largely very profitable, can and should shoulder that reduction in profits in light of the significant contribution and their public trustee obligation. For, as stated in the above CBS case, 453 U.S. at 367, "[a] licensed broadcaster is 'granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations . . .'" In short, the facial constitutional challenge, whether under the First Amendment or the "takings" clause, must fail.

It may seem that I have given the "takings" argument short shrift. But if, as I have shown, the public trustee regulatory scheme is constitutional under the First Amendment and the regulations here in question are reasonable in light of the public trustee obligation, these two considerations do also foreclose the "takings" argument. As the Supreme Court said in *Dolan v. City of Tigard*, 114 S.Ct. 2309, 2316 (1994), "one of the principal purposes of the Takings Clause is 'to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole'." Here in all fairness and justice, the public burden is properly on the broadcaster. For here we have a scheme of short term licenses, with no right to use beyond the terms and thus no property interest in the license (see sections 304, 309(h)), given free to the licensees but on the express condition they serve the public interest as fiduciaries for their communities and thus subject to reasonable regulation to implement that obligation. Indeed, if they do not comply with that duty, the Government expressly reserves the right to end the operation either by revocation or denial of renewal of the license. In these circumstances, for a broadcast licensee to argue that some new reasonable regulation implementing the public interest obligation such as the 1990 Children's Television Act or the provisions of S. 1219 is a "taking" is really a new definition of Chutzpah (gall). Such reasonable regulation inheres in the very license that was sought and accepted on those terms. Cf. *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886, 2900 (1992); *Connolly v. Pensions Ben. Guar. Corp.*, 106 S.Ct. 1018 (1986).

Notice that I said, reasonable regulation. Any regulation may go "too far" (*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922))—for example, if the regulation required that broadcasters give up all and a great deal of their time to free political broadcasts. But as shown above, that is not this case, and in any event, there can be provisions for dealing with any significant hardship cases if they do arise.

There are two final points to be made as to the broadcaster provisions. First, the constitutional arguments advanced as to S. 1219 are equally applicable to the entire public trustee scheme. That means, for instance, that section 312(a)(7) would also be unconstitutional (but see CBS above), as would be the requirement of the 1990 Children's Television Act. In effect, what is being sought is reversal of *Red Lion*, and treatment under strict scrutiny, with the result that the print model, exemplified by *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974) would be applicable.

Second, broadcasters have the right to argue for reversal of *Red Lion*. But the broadcast industry has recently also argued very strongly that they do have an obligation to serve the public interest, and therefore should not be subjected to spectrum usage fees or auctions. Thus, in the 103rd Congress, the Administration sought funds to offset lost revenues from the GATT agreement and proposed a \$5 billion usage fee on broadcasters. The National Association of Broadcasters (NAB) successfully opposed this effort, and used the argument that this fee scheme would "change the landscape of communications policy" by eliminating broadcasters' commitment to serve the public interest in exchange for free use of the spectrum. "Broadcasters have always supported that compact, [NAB President] Fritts said, [and this p]roposal puts it at risk."¹ The same claim was made in opposition to proposals to auction broadcast licenses generally and in connection with the allocation of new spectrum to the broadcasters for advanced television transmission (digital, including high definition). But the NAB cannot have it both ways: It can't argue against spectrum usage fees or auctions on the ground

¹ Broadcasting & Cable Mag., June 13, 1994, 42-43.

of the public interest compact, and then urge that this same compact violates the Constitution and is unenforceable on that ground.

Indeed, if the public trustee concept is unconstitutional, Congress must confront a host of issues. Should the FCC's auction authority be extended to cover broadcasting, since it is now the same as common carrier—just a business, with no obligation to put public service ahead of profits? Should there be a spectrum usage fee? Should public broadcasting be strengthened, perhaps with sums from such a fee, since that may be the only feasible route for government to provide public service such as educational programming for children? The list could be extended in light of the sea change caused by such a shift in regulatory policy.

Finally, there is the question of the constitutionality of these provisions as applied to cable television. Under Section 315(c)(2), cable is subject to the equal opportunities, no censorship, and lowest unit rate requirements of Section 315. As stated, under *Turner*, cable regulation comes within traditional First Amendment jurisprudence rather than *Red Lion*. So the initial issue is whether the 50 percent reduction in Section 103 is a content-based or content-neutral regulation. In my view, it is content-neutral, since it simply states that if a cable television operator on its origination cablecasting channels (defined as channels over which the cable operator has exclusive control—see 47 C.F.R. 76.5(p)) presents a candidate, it must afford the specified low rates. This would bring the regulation under the intermediate test of *O'Brien*,¹ and I believe that it would be found constitutional, just as the equal opportunities requirement is constitutional as applied to candidate presentations in matter such as ad insertions over which the cable operator has exclusive control.

Section 102 would require cable systems to afford free time to Senate candidates over their cablecasting originating channels. Further, section 103(d) would make the access provisions of 312(a)(7) applicable to cable systems. It would thus reverse the FCC's holdings that the section does not apply because it is couched in terms of revocation of license and cable is not licensed by the Commission.² Both these provisions are content-based regulation, and would thus come under the strict scrutiny test. That means that if the Committee decides to retain these provisions, it should explicate how they are narrowly tailored to meet a compelling governmental interest. In light of the relatively small percentage of cable systems that engage in cablecasting origination (estimated to be about 10 percent) and the low audience shares garnered by such channels, it seems dubious to me that a compelling governmental interest can be shown at this time.

I hope that the foregoing discussion is helpful to the Committee in its consideration of this important legislation.

The CHAIRMAN. If I might ask one thing, in looking over your distinguished career here, we are studying this issue, of course, through the hearing process and other material. Would you be willing to submit to the committee a short bibliography of articles and pieces and reference work, not necessarily all agreeing with your point of view, but that you think are worthy of consideration as we plow through the mass of material relating to this issue?

Mr. GELLER. I would be glad to do that. There is a tremendous amount of material there on the First Amendment and broadcasting. There are books that have been written on it.

¹ Under *O'Brien* (391 U.S. 367, 377 (1968)), a content neutral regulation is valid if it "furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

² See Codification of the Commission's Political Programming Practices, 7 FCC Rcd 678, 680, n.11 (1992). The provision could be enforced through cease and desist or forfeiture orders. I suggest that further study is called for as to how the provision, if it is retained, is to be implemented as to cable.

The CHAIRMAN. I am fully aware, but I am just interested in your opinion.

Mr. GELLER. I would be delighted to do so.

The CHAIRMAN. Professor, would you, likewise, be willing to do that?

Mr. BARBER. I would be pleased to do so.

The CHAIRMAN. And the other witnesses? We would be appreciated.

Now, Mr. DeVore?

TESTIMONY OF P. CAMERON DEVORE, DAVIS WRIGHT TREMAINE LAW OFFICES, SEATTLE, WA

Mr. DEVORE. Mr. Chairman and members, I am never clear as to what is best, to come before Henry Geller or after Henry Geller, but we will have a chance to talk about some of the issues that he has raised.

Let me just leap into this. Henry and I do disagree, I think, fundamentally, and I think it is not a matter of a difference between what the law is and what the law might be. I think our job is more complicated. It is to try to decide what this Supreme Court would do, not what the Supreme Court did in 1969 with then-Justice White writing the majority opinion, the unanimous opinion in *Red Lion*, or what the Court did in 1981 with Justice Burger, but what the Court would do today. I think that is a somewhat more complex process but one that I think you have to pay attention to, because there are a lot of indications, I think, about what the Court would do.

Section 102 is certainly a part of S. 1219's menu of provisions aimed at campaign finance reform. It is my view that that simply would not pass muster under the First Amendment. One of the clearest mandates of constitutional free speech protection is that Congress shall make no law that would compel the media to publish or broadcast speech not of their choosing, and I carefully link publication and broadcasting under that concept because I submit that this precept today applies equally to the broadcast media, at least with regard to the political speech that is the subject of Section 102.

The 1969 *Red Lion* spectrum scarcity rationale for permitting a limited degree of government control of content—not the degree, I think, that Professor Barber would suggest even then—has been bypassed by the intervening and immense explosion of new media outlets in America. Spectrum scarcity rationale in *Red Lion* was the central assumption of the Federal Communications Act of 1934. The obvious idea is that spectrum is a scarce commodity.

Obtaining a Federal license to a slice of that justified a degree of Federal regulatory control. That was designed largely so that the public would hear diverse voices over the airwaves, radio and television, and they, for the first 50 years of that Act, were

the only available form of electronic media. Then came, and all these things really have come not just since *Red Lion*, they have really come, to the degree that we have them today, since *CBS v. FCC* in 1981—cable television, the explosion of cable, satellite transmission, and the Internet, let alone newly available spectrum.

Now, *Red Lion* has not been overruled, and I certainly agree with the other speakers on that point and with Professor Schauer on that point. But its rationale has not survived, particularly as a viable counterweight to the First Amendment rights of broadcasters to control their own political speech content. *Red Lion*, I submit, is an historic artifact that can no longer justify even less egregious examples of government-compelled speech than Section 102 of 1219.

Of course, the First Amendment is not absolute, but I submit that content regulation, just like the free broadcast provision in Section 102, would be subjected to the most stringent First Amendment strict scrutiny.

Mr. Geller talks about *Turner*. *Turner*, as you recall, was the 1994 decision of the Court dealing with "must carry". *Turner* just did not reach *Red Lion*. I think to say that *Turner* really gave *Red Lion* a boost into the future by adopting it is not a correct statement of what the Court did.

They made it clear they did not need to reach *Red Lion* in that, and the kind of scarcity that the *Turner* Court was talking about was just not the kind of scarcity we are talking about here. It was the bottleneck problem or scarcity caused by cable television, whether or not they were going to run the signals or the broadcasts of the local broadcasters and networks.

I believe that strict scrutiny would apply under these circumstances and that Congress simply can't mandate that the content of speech, absent a compelling necessity—that's the first leg of that strict scrutiny test—and then only by precisely and narrowly drawn regulations. The government has the burden of proving both of those things.

In my judgment, this provision would fail both. The compelling interest here, does this free time directly advance that interest? Certainly the integrity of the federal election process, we can all agree, is a compelling goal. And to seek to achieve that by establishing incentives for candidates to reduce campaign expenditures voluntarily, that, too, is a good idea. But I think it would be virtually impossible to prove that a reduction in campaign spending would have a measurable or any positive effect on the integrity of the federal electoral process.

The Supreme Court has already found in the *Buckley* case, as they said the mere growth in the cost of federal election campaigns, in and of itself, provides no basis for governmental restrictions on the quantity of campaign spending.

Candidates are just as likely, in my view, to seem beholden to special interests under the spending limits of S. 1219, than

without such limits. Indeed, free, as opposed to paid, sound-bite television ads late in the campaign season, in spite of the best wishes of Mr. Taylor and Professor Barber, I believe are just as likely to be nonsubstantive and negative, in engendering public disgust, rather than somehow enhancing confidence in the integrity of the federal election system; unless, of course, you take the second step into federal control and also control, as Professor Barber would, the content of what the candidates say. There's a kind of "double hit" in his control mechanisms.

I just don't think the government could meet the direct advancement prong of the First Amendment strict scrutiny test. The second prong, even if you could show direct advancement, is the total lack of narrow tailoring. There are so many obvious ways for Congress to pursue election integrity and the cost of elections without requiring a segment of the broadcast media to subsidize federal campaigns. If only one such alternative is available, this test simply can't be met.

There are three that come to mind. The Supreme Court said, for example, in *Buckley*, "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on the agreement by the candidate to abide by specified expenditure limitations." However unpalatable that solution might be to some Members of Congress, there it stands as a constitutionally permissible, viable way to achieve the thing that you would be trying, in effect, to take out of the hides of the broadcasters.

Second, Congress could enact more stringent limits on contributions to campaigns. This has been upheld as a concept in *Buckley*. Third, you listened to the broadcasters this morning make their intriguing proposal, saying that unless you agree to abide by the campaign limits, you don't qualify for the lower unit cost that's available to other candidates.

Again, I have problems with the lowest unit rate requirement, and I think that sort of doubling it or perhaps more than doubling it, as both Mr. Bramstedt and Mr. Schmidt testified, would raise exacerbating constitutional problems in the lowest unit rate item. But that at least is another alternative that keeps you out of the speech problem that I think you're in here.

I think there really isn't a sustainable argument that Section 102 would meet the requirements of First Amendment strict scrutiny. I don't think it would meet intermediate scrutiny. Again, Mr. Geller suggested that intermediate scrutiny might be the test. In *Turner*, of course, we were talking about cable television, and that's why intermediate scrutiny was applied there. But again, one of the arms of intermediate scrutiny has to do with whether there are less intrusive alternatives to achieve it. I think we have just gone through a litany of those and I don't think intermediate scrutiny would be passed even if that applied.

We also, I believe, have problems under the Fifth Amendment, the takings test. I don't think you can make light of this. I don't think the trustee concept is some sort of universal solvent that prevents taking a hard look at the impact of this. You have heard about the impacts of this this morning and they are dramatic. This will be a taking of property without just compensation. That concept has been expanded by the Supreme Court in recent years.

Allocating this burden also just to the broadcasters rather than to all media would deny equal protection of the laws. In short, both S. 1219's free-time requirement in 102, and the additional 50 percent discount in 103, I believe are constitutionally impermissible.

I think again we have to decide what this Court is going to do. If you look back at one of Mr. Geller's key cases, *CBS v. FCC* in 1981, that wasn't a comparable situation. We were talking about reasonable access, but that was something measured over the life of a license and it had to do with the ability to buy time as opposed to the free time concept here. They're just not comparable. The balance that was applied by the Court there, even if you accept the majority opinion in that case, is not the same.

But three Justices dissented, and of all the Justices who sat in 1981, only two of those Justices, both dissenters, are still on this Court—Justice Stevens and Chief Justice Rehnquist. They perhaps represent—and I'm sure Mr. Geller and I would agree on this—kind of the broadest spectrum of First Amendment views on this Court. I think that you could expect both of them, just based on that alone, to be very skeptical about this.

I think again we have to look and try to decide what this Court would do, and I think if you look, for example, at the fairness decision of the D.C. Circuit in 1990, and you look there at the First Amendment analysis, and particularly Judge Starr's analysis in his concurrence, about the fact that the whole rationale of scarcity is gone, I think Judge Starr's views on this may be a better harbinger of what this particular Supreme Court would do than what was said by Chief Justice Burger and Justice White in the past.

In any case, these are fascinating questions, and while I think reasonable minds can differ about these constitutional views, I think we have to try to bring it down to today and try to decide what this Court is going to do. I think this Court would hold this as unconstitutional.

[The prepared statement of Mr. DeVore follows:]

PREPARED STATEMENT OF P. CAMERON DEVORE, DAVIS WHITE TREMAINE
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CONSTITUTIONAL INFIRMITIES OF PENDING POLITICAL
BROADCASTING LEGISLATION

PREPARED FOR NATIONAL ASSOCIATION OF BROADCASTERS

By P. Cameron DeVore, Gregory J. Kopta, Robert W. Lofton

Summary

Pending Congressional campaign finance reform legislation would substantially expand federal political candidates' "reasonable access" to broadcast time, raising fundamental issues under both the First and Fifth Amendments to the United States Constitution. Several bills would require broadcasters to provide free and/or heavily discounted time to political candidates as an incentive for candidates to voluntarily comply with campaign spending limits. The goal of this legislation apparently is to reduce the cost of federal election campaigns for House and Senate seats and thereby enhance the integrity of the electoral process.

By requiring broadcasters to finance political candidates, the pending legislation would compel broadcasters to engage in protected speech. Such a requirement could only be justified by compelling necessity, and then only if precisely tailored to the government's interest. Mandating that broadcasters, rather than candidates, pay to communicate partisan political messages would not advance the government's interest in enhancing the integrity of the electoral process. In addition, the government could advance that interest more effectively through numerous alternatives that do not involve encroachments on First Amendment freedoms.

Broadcasters historically have been subject to more restrictions than have other media on their constitutionally protected editorial discretion, but the traditional rationale of spectrum scarcity no longer justifies singling out broadcasters for reduced First Amendment protection, particularly in light of the multiplicity of other outlets for diverse viewpoints. The pending legislation nevertheless could not survive even the "intermediate scrutiny" requirements of narrow tailoring to a substantial government purpose. Compelling broadcasters to finance political campaigns would bear no relationship to broadcasters' public interest duties, and would upset the delicate balance between their journalistic freedoms and their obligations as licensees of the public airwaves. By singling out broadcasting from other media and usurping broadcast facilities and time, the proposed legislation also denies broadcasters equal protection of the law and takes their property without just compensation, in violation of the Fifth Amendment.

For all of these reasons, it is our view that those aspects of the pending legislation that require broadcasters to provide free or subsidized time for political candidates' speech would likely be held unconstitutional by the courts.

I. The Proposed Legislation Would Require Broadcasters to Finance Campaign Finance Reform.

Several bills addressing campaign finance reform currently are pending before both houses of Congress,¹ but these bills generally include similar provisions. The pending legislation would establish voluntary spending limits for candidates for House or Senate seats. In most of the bills, candidates in contested elections who comply with these limits would be entitled to 30 minutes (or more) of free broadcast time during "prime" viewing hours (between 6 p.m. and 10 p.m., Monday through Friday) from broadcast stations within their State or an adjacent State. Candidates would be entitled to use the time as they choose in intervals of not less than 30 seconds nor more than 5 minutes. Almost all of the bills provide that candidates who agree to spending limits may purchase broadcast time at a

¹ These bills include S. 1389 (introduced Nov. 3, 1995, H.R. 2566 (introduced Oct. 31, 1995), S. 1219 (introduced Sept. 7, 1995), S. 116 (introduced Jan. 4, 1995), S. 46 (introduced Jan. 4, 1995), and S. 10 (introduced Jan. 4, 1995).

rate of no more than half the lowest rate stations charge their advertisers for broadcast time.

The pending legislation does not specify the purpose underlying these proposed requirements. Presumably, the bills represent an attempt to reduce the amount of money needed to run a political campaign—and the perceived influence of groups that provide such money—by encouraging candidates to limit their campaign spending voluntarily. The reward for agreeing to the specified limits would be the ability to access broadcast time for free or at substantially reduced rates.

The legislation, however, fails to recognize that broadcasters, like other media, are constitutionally protected in exercising largely unfettered discretion over the content of their broadcasts. The bills also seem to ignore the fact that broadcast time costs money, which must be paid by the broadcaster if it is not paid by the person who uses the time. Access to free or subsidized broadcast time might encourage compliance with voluntary campaign spending limits—although this proposal is based on untested surmise—but the cost to broadcasters of reduced editorial discretion and compelled subsidization of political campaigns would raise serious First and Fifth Amendment concerns.

II. The Pending Legislation Impermissibly Would Require Broadcasters to Engage in Compelled Speech.

A. Congress May Not Mandate Political Speech Absent Compelling Necessity and Precise Tailoring.

"At the heart of the First Amendment lies the principle that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Turner Broadcasting System, Inc. v. F.C.C.*, 114 S. Ct. 2445, 2458 (1994) (plurality op.).

The very idea that a noncommercial speech restriction be used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment, for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression. The Speech Clause has no more certain antithesis. While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.

Hurley v. Irish American Gay, Lesbian, and Bisexual Group of Boston, 115 S. Ct. 2338, 2350 (1995) (citation omitted); *accord* *Turner Broadcasting*, 114 S. Ct. at 2458; *Pacific Gas & Electric Co. v. California P.U.C.*, 475 U.S. 1 (1986); *Wooley v. Maynard*, 430 U.S. 705 (1977); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

In no category of speech are these principles more important than political speech. Political speech—particularly speech concerning candidates for office—is at the core of First Amendment protection. *McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511, 1518 (1995); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776-77 (1978); *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). The fact that broadcasters are paid for airing political advertisements in no way diminishes this First Amendment protection or transforms either paid or voluntary political speech into commercial speech entitled to less constitutional protection. *First National Bank of Boston v. Bellotti*, 435 U.S. at 776-77; *see* *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964) (full protection for advertisement on political subject).

Government preference for, or prohibition of, political speech or any other category of speech based on its content is particularly repugnant under the First Amendment. *FCC v. League of Women Voters*, 468 U.S. 364, 383 (1984); *Consolidated Edison Co. of New York v. Public Service Comm'n of New York*, 447 U.S. 530, 537 (1980). Content-based regulation is subject to the most stringent First Amendment scrutiny—Congress may "not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored." *Riley v. National Federation for the Blind*, 487 U.S. 781, 800 (1988); *accord, e.g., Texas v. Johnson*, 491 U.S. 397, 412 (1989); *Boos v. Barry*, 485 U.S. 312 (1988); *Pacific Gas & Electric Co. v. California P.U.C.*, 475 U.S. at 19.

The pending legislation represents just such content-based regulation. The bills would require broadcasters to provide free and/or subsidized broadcast time to candidates for federal office just prior to elections. The candidates could use the time as they choose, but the obvious purpose is to allow candidates to discuss their candidacy, not simply to provide an opportunity to expound on general matters of public interest.¹ All candidates in contested elections—not simply government-favored candidates—would be entitled to the subsidized time, but that time is allotted to candidates *because* of their political viewpoints as a means of enabling them to convey *their* message in *their* own words. The interest in ensuring that specific individuals are given time to communicate their partisan political views is directly tied to the content of what the speakers will likely say. As such, the pending legislation is content regulation of speech subject to strict First Amendment scrutiny. See, e.g., *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 112 S. Ct. 501 (1991) (requirement that proceeds of book by criminal about crimes be given to victims is content-based regulation of speech subject to strict scrutiny); *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987) (tax applied to general interest magazines but exempting religious, professional, trade and sports journals is content-based regulation of speech subject to strict scrutiny); *Buckley v. Valeo*, 424 U.S. 1 (1976) (limits on campaign contributions and expenditures are regulation of speech subject to strict scrutiny).²

The government bears a heavy burden to prove that content-based regulations on speech do not impermissibly infringe First Amendment freedoms. E.g., *Arkansas Writers' Project*, 481 U.S. at 231. The government cannot carry that burden with respect to the pending legislation.

B. Requiring Broadcasters to Provide Free or Subsidized Broadcast Time Impermissibly Would Infringe First Amendment Freedoms.

To withstand a First Amendment challenge, the government must be able to prove that requiring broadcasters to provide free and subsidized broadcast time to political candidates directly advances a compelling governmental interest and is as precisely tailored as possible to achieve that interest. E.g., *Boos v. Barry*, 485 U.S. at 321–22. The integrity and credibility of the electoral process is a compelling state interest. See *Buckley v. Valeo*, 424 U.S. at 27. Mandating free and subsidized broadcast time, however, does not directly advance, nor is it narrowly tailored to achieve, that interest.

The pending legislation apparently seeks to enhance the integrity and credibility of the electoral process by establishing incentives for candidates to reduce campaign spending voluntarily. The government would find it difficult, if not impossible, to prove that a reduction in campaign spending would have any positive impact on the integrity of the political process. The Supreme Court already has found that “the mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns.” *Buckley v. Valeo*, 424 U.S. at 57. Candidates are just as likely to be or appear to be beholden to special interests (or better able to self-finance their campaigns) under spending limits as they are or appear to be without such limits. Encouraging spending limits through free and subsidized access to broadcast time, moreover, might actually undermine public confidence in the political process by encouraging political advertisements on television and radio which are increasingly negative and uninformative, eliciting public disgust, rather than

¹ Indeed, candidates in uncontested elections are not entitled to any free broadcast time.

² Even if the pending legislation is not considered to dictate the content of speech, it still must be able to survive exacting First Amendment scrutiny. A content-neutral restriction that imposes only an incidental burden on speech can only be justified if “it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *U.S. v. O'Brien*, 391 U.S. 367, 377 (1968); accord, e.g., *Turner Broadcasting*, 114 S. Ct. at 2469. To satisfy this standard the restrictions must not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). As discussed below, the government could not satisfy such “intermediate scrutiny,” even if applicable. See *infra*, at p. 8.

confidence, in the political system. Establishing incentives to reduce campaign spending—particularly access to free and subsidized broadcast time—would not advance the government's interest in enhancing the integrity of the electoral process.

If incentives to reduce campaign spending could bring some measure of integrity in the political process, the pending legislation nevertheless would fail to survive strict scrutiny through its utter lack of tailoring to the government's interest. Even a compelling governmental "purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose.'" *Wooley v. Maynard*, 430 U.S. 705, 716-17 (1977) (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). Numerous means exist for pursuing the goal of enhancing the integrity of the political process that are far less drastic than requiring broadcasters to finance candidates' political campaigns.

Most obviously, "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations." *Buckley v. Valeo*, 424 U.S. at 57 n.65. "This procedure would communicate the desired information to the public without burdening a speaker with unwanted speech . . ." *Riley*, 487 U.S. at 800. Congress' philosophical objections to such an alternative do not render constitutionally palatable the pending legislation's attempt to make broadcasters shoulder the bulk of the burden of campaign finance reform.

In addition, Congress could enact more stringent limits on contributions to political campaigns. The Supreme Court has upheld the constitutionality of limits on political contributions. *Buckley v. Valeo*, 424 U.S. at 58. Additional limits could include, for example, more restrictions on campaign contributions from political action committees and on so-called "soft" money contributed to political parties that is used to finance individual campaigns. Congress could also seek to work with the States to explore means of reducing the need for candidates to expend substantial funds, for example by limiting primaries and enhancing the coordination and timing of primaries and elections.

Congress cannot compel broadcasters to finance political campaigns as long as means exist to enhance the integrity of the political process that do not burden free speech rights. The pending legislation would force broadcasters to make contributions of advertising, services and broadcast facilities to candidates they might not otherwise choose to support, all in violation of the First Amendment protected right not to engage in government-mandated speech. See *Riley*, 487 U.S. at 800; *Buckley v. Valeo*, 424 U.S. 1; see also *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, ___ (1990) (Brennan, J., concurring) (discussing First Amendment issues relating to forced political contributions).

C. The Nature of Broadcasting Does Not Lessen the Government's Burden of Proof.

Sponsors of the pending legislation likely have singled out broadcasters to finance campaign finance reform in light of the Supreme Court's decision in *CBS, Inc. v. FCC*, 453 U.S. 367 (1981). The Court in that case concluded that the statutory right of federal political candidates to "reasonable access" to broadcast time "properly balances the First Amendment rights of federal candidates, the public, and broadcasters." *Id.* at 397. Presumably, the bills' sponsors believe that the compelled speech requirements in the pending legislation might well survive First Amendment challenge on the same grounds. Not only does the Court's decision fail to support such a proposition,¹ but developments over the 14 years

¹ As an initial matter, the pending legislation is not limited to broadcasters. The current statute defines "broadcasting station" and "licensee" to include cable television systems and operators. 47 U.S.C. §315(c). The proposed bills do not amend these definitions and thus would require cable television operators as well as broadcasters to provide free and subsidized time. "But the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation, whatever its validity in the cases elaborating it, does not apply in the context of cable regulation." *Turner Broadcasting*, 114 S. Ct. at 2456. The pending legislation, therefore, must satisfy strict scrutiny without regard to any unique circumstances presented by application of its requirements to broadcasters.

since that case was decided have eroded its underlying rationale, seriously threatening its continued vitality.

1. "Reasonable Access" Would Not Include Requiring Broadcasters to Finance Political Speech.

The Supreme Court historically "has required some adjustment in First Amendment analysis" for broadcasters because "given spectrum scarcity, those who are granted a license to broadcast must serve in a sense as fiduciaries for the public" interest. *FCC v. League of Women Voters*, 468 U.S. 364, 377 (1984). At the same time, the Court has "made clear that broadcasters are engaged in a vital and independent form of communicative activity. As a result, the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory authority in this area." *Id.* at 378. Congressional restrictions on broadcasters' editorial judgment and control at a minimum "have been upheld only when [the Court was] satisfied that the restriction is narrowly tailored to further a substantial governmental interest, such as ensuring adequate and balanced coverage of public issues." *Id.* at 380.

The rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation is of questionable vitality today, *see infra* at p. 10, but even assuming that the pending legislation need satisfy only "intermediate scrutiny," it could not withstand such scrutiny. Compelling broadcasters to sponsor candidates' partisan political speech as an incentive to reduce campaign spending would not enhance the integrity of the electoral process, regardless of whether than interest is considered compelling or substantial. Nor is such a compelled speech requirement either narrowly or precisely tailored to further that interest in light of the availability of the numerous alternatives, discussed *supra* at p. 6-7, that impose less of a burden on protected speech. *See id.* at 397-98 (restriction not narrowly tailored in light of the "variety of regulatory means that intrude far less drastically upon the 'journalistic freedom' of . . . broadcasters") (quoting *CBS v. Democratic Nat'l Committee*, 412 U.S. 94, 110 (1973)).

Indeed, the decision in *CBS v. FCC* is consistent with this analysis. The Court in that case did not approve a broad right of access to the media, but upheld "a limited right to 'reasonable' access" under section 312(a)(7). 453 U.S. at 396 (emphasis in original). The Court reached its decision only after recognizing that "the broadcasting industry is entitled under the First Amendment to exercise 'the widest journalistic freedom consistent with its public [duties]'" and that government restrictions on the editorial discretion of broadcasters "'call for a delicate balancing of competing interests.'" *Id.* at 394-95 (quoting *CBS v. Democratic Nat'l Committee*, 412 U.S. at 110 & 117). The "reasonable access" requirement upheld by the Court was expressly limited to political candidates "for paid political broadcasts on behalf of their candidacies." *Id.* at 382 (emphasis added). "No request for access must be honored under § 312(a)(7) unless the candidate is willing to pay for the time sought." *Id.* at 382 n.8. The Court never has addressed the constitutionality of the broadcast time requirements in section 315,¹ much less scrutinized the permissibility of free or heavily discounted broadcast time as required in the pending legislation that would amend that section.

A requirement entitling political candidates to free or subsidized broadcast time goes far beyond "reasonable access" and would upset the "delicate balance" the Court reached in *CBS v. FCC*. The Court found that a limited right of political candidates to "reasonable access" "represents an effort by Congress to assure that an important resource—the airwaves—will be used in the public interest," 453 U.S. at 397, and concluded that the public interest is served by affording political candidates an opportunity to "present, and the public to receive, information necessary for the effective operation of the democratic process." *Id.* at 396. That

¹ These requirements include an "equal access" requirement that if a broadcaster allows access to one candidate, it must also allow the same access to all other candidates for that office, 47 U.S.C. §315(a), and a "lowest unit rate" requirement, which limits charges for political candidates' advertising time to the broadcaster's lowest unit charge for the same class and amount of time for the same period. *Id.* §315(b). These provisions in current law are of dubious constitutionality under the First Amendment.

public interest does not include having broadcasters pay to broadcast political candidates' information.

Broadcasters add substantial value to the licenses they receive from the federal government through investments in programming, operations, and equipment. The broadcasters are compensated for this investment through the sale of broadcast time to advertisers. The rates charged for this time vary according to the time of day and the program during, before, or after which the advertisement is broadcast. The pending legislation would mandate not only that political candidates be given the opportunity to have their message broadcast but that the broadcast occur when broadcast time is most valuable (so-called "prime time") and that it be paid for by the broadcaster. Such a requirement would be a far more expansive encroachment on broadcasters' editorial discretion than the "reasonable access" upheld in *CBS v. FCC*, and would represent nothing less than a tax on broadcasters to finance partisan political campaigns—an issue never considered, much less decided, in that case.¹

The pending legislation would skew the "delicate balance" of competing interests entirely in favor of political candidates. The public would gain no benefit from having broadcasters, rather than the candidates themselves, finance partisan political messages, and the broadcasters' ability to control the content of their broadcasts and refrain from supporting speech with which they do not agree would be severely infringed. Under these circumstances, the pending legislation plainly would violate the freedom of speech and press guaranteed by the First Amendment.

2. Scarcity No Longer Justifies Treating Broadcasters Differently Than Other Media Entities.

The pending legislation fails to satisfy even the intermediate scrutiny historically applied to restrictions on broadcasters' speech, but the basis for according broadcasters lesser freedom than other media has rapidly eroded. The spectrum scarcity rationale ostensibly justifying such disparate treatment has come under increasing attack, and the scarcity that gave rise to earlier Supreme Court decisions is rapidly disappearing. In all likelihood, therefore, the pending legislation—and any other restriction on broadcasters' speech—properly would be subject to the strict scrutiny applied to infringements of the freedoms granted to all media.

The Supreme Court in *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969), and its progeny relied on the scarcity of broadcast frequencies to justify regulation of broadcast licensees in the public interest and the "paramount" right of the public "to have the medium function consistently with the ends and purposes of the First Amendment." *Id.* at 389. Such scarcity became equivalent to scarcity of outlets for diverse viewpoints because broadcasting was virtually the only form of electronic mass media for the first 50 years of its existence. The advent of cable television, satellite transmissions, and the Internet have vastly increased the number and availability of electronic mass media outlets and have all but erased any scarcity of sources for diverse viewpoints.²

There is little question that the avoidance of frequency interference and other spectrum problems is a sufficient reason for government regulation of broadcast frequencies. Licensing for those purposes is not inherently unconstitutional, nor

¹ Alternatively, compelled financing could be interpreted as a license fee. The tying of mandated or discounted broadcast requirements to the licensing of frequencies, however, is inconsistent with the Court's admonition that government may not, consistent with the First Amendment, condition the grant of a government benefit on the sacrifice of a constitutional freedom. *Rutan v. Republican Party*, 497 U.S. 62 (1990); *Speiser v. Randall*, 357 U.S. 513 (1958). Broadcasters do not lose their First Amendment freedoms merely because the FCC grants the licenses under which they operate. See *FCC v. League of Women Voters*, 468 U.S. at 376–81. Such a construction of the pending legislation also raises takings concerns, discussed *infra*.

² Indeed, 60 percent of television viewers subscribe to cable television, and far from regarding broadcasting as the public's sole source of diverse viewpoints, Congress' concern is that broadcasting may no longer function as a viable source of diverse viewpoints if broadcast signals are not carried by cable operators. See *Turner Broadcasting*, 114 S. Ct. at 2454 & 2473. The Court recognized the likelihood of such a transition, observing with respect to the broadcast industry, that "solutions adequate a decade ago are not necessarily so now, and those accepted today may well be outmoded 10 years hence." *CBS v. Democratic Nat'l Committee*, 412 U.S. at 102.

does the First Amendment necessarily prevent content-neutral mechanisms serving goals like local and universal service. See, e.g., *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). But "spectrum scarcity, without more, does not necessarily justify regulatory schemes which intrude into First Amendment territory." *Syracuse Peace Council v. F.C.C.*, 867 F.2d 654, 683 (D.C. Cir. 1989) (Starr J., concurring), cert. denied, 493 U.S. 1019 (1990).

Regulation and licensing with the goal of picking qualified licensees is critically distinct from restrictions that force publication and subsidization of a particular kind of speech because of its content. The former allows review of a licensee's performance to measure good faith and reasonable efforts to respond to community interest and satisfaction of minimum performance criteria in the public interest. The latter compels speech and requires broadcasters to subsidize a particular kind of speech during a license term. The former comports with the requirement of minimum intrusion commensurate with the necessity of licensing. The latter founders because such political speech will be heard over a broad range of media and from a range of voices even without the requirement and because it is not necessary to selection of licensees to serve the public interest.

Accordingly, courts increasingly have criticized the use of presumed scarcity of media for mass distribution of video and audio information as a means of justifying content regulation. See, e.g., *Turner Broadcasting*, 114 S. Ct. at 2456 (impliedly questioning the validity of disparate treatment for broadcasters); *Telecommunications Research and Action Center v. F.C.C.*, 801 F.2d 501 (D.C. Cir. 1986) ("The basic difficulty in this entire area is that the line drawn between print media and the broadcast media, resting as it does on the physical scarcity of the latter, is a distinction without a difference. . . . Since scarcity is a universal fact, it hardly explains regulation in one context and not another."). The FCC in partial response has abolished the Fairness Doctrine which gave rise to the Court's decision in *Red Lion*. See *Syracuse Peace Council*, *supra* (affirming *Meredith*, 2 F.C.C. Rec. 5043 (1987), recon. denied, 3 F.C.C. Rec. 2035 (1988), *aff'd sub nom. Syracuse Peace Council*, cited *supra*). The traditional and undifferentiated claim that spectrum scarcity justifies regulation thus has lost much of its intellectual vitality, and there is a growing recognition that the need for government allocation and licensing to avoid interference, even under historical conditions of scarcity, does not require favoritism for particular speech or speakers based on the content of messages.

The pending legislation is being considered at a time when the scarcity rationale no longer justifies content-based regulation of broadcasters' speech—particularly restrictions that not only encroach on broadcasters' editorial discretion but that require broadcasters to finance speech with which they may not agree. Government-compelled speech is anathema under the First Amendment. Whether analyzed under strict scrutiny or a lesser standard, the pending legislation could not, and would not, survive judicial review.

I. The Pending Legislation Violates Fifth Amendment Guarantees of Equal Protection and Freedom From Uncompensated Taking.

The First Amendment is not the only constitutional provision implicated by the pending legislation. These bills also raise issues under the Fifth Amendment. By compelling speech through mandated campaign contributions, the pending legislation would take broadcasters' property without just compensation. Application of these requirements only to broadcasters, rather than to all media enterprises, also would infringe guarantees of equal protection.

A. The Pending Legislation Would Take Broadcasters' Property Without Just Compensation.

The Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation," U.S. Const. amend. V. This guarantee is designed to "bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Penn Central Transportation Co. v. New York*, 438 U.S. 104, 123 (1978) (quoting *Armstrong v. United States*, 364 U.S. 49 (1960)). Any governmental action that effects even a minor taking of property rights brings into question the constitutional obligation to pay just compensation, as measured by market value

at the time of the taking. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *United States v. Fifty Acres of Land*, 469 U.S. 24, 29 (1984). Just compensation must be paid whether the intrusion is comparable to an easement, *Nollan v. California Coastal Commission*, 483 U.S. 825, 831–32 (1987), or more permanent, as in *Loretto*, and regardless of the degree of economic impact or the public interest asserted.

The pending legislation would implicate at least two property rights: (1) the broadcasters' rights in station facilities and work of station personnel; and (2) the value of broadcast time that results from the investment of capital and effort to create and maintain an ongoing broadcast station where there would otherwise be only a bare frequency allocation.¹ Broadcasters receive a license from the federal government to use a specific radio frequency. This bare frequency, however, cannot be used until the licensee constructs facilities capable of sending communications using these frequencies and hires personnel to operate those facilities. Even then, communication requires an audience, which the licensee develops through investment in programming, including coverage of news, public events, sports, and various entertainment programming.

Under the "free" broadcasting scheme long ago established by Congress, the licensee recovers the cost of its facilities, personnel, and programming through agreements to broadcast others' messages at specified times during the day that the broadcaster has devoted for such purposes. The rates for this advertising depend on the length of the message, the time of day the advertiser chooses to have its message broadcast and the programming during, before, or after which the advertisement airs. By requiring that broadcasters air political candidates' advertisements—rather than other advertisers' messages—without charge and/or at rates of no more than half of what other advertisers pay, the pending legislation would take broadcasters' property without just compensation.

Without question, a taking would occur if Congress were simply to mandate that an expressive enterprise reserve a portion of its medium of expression for use by the general public. "Such public access would deprive [the media] of the right to exclude others, 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Dolan v. City of Tigard*, 114 S. Ct. 2309, 2316 (1994). The pending legislation represents just such a mandate to broadcasters. Broadcasters are unable to exclude political candidates' messages from their programming, and they would not receive compensation for that access. These circumstances pose a clear violation of the Fifth Amendment.

The pending legislation may be intended as a condition on broadcasters' license to use the public airwaves.² "Under the well-settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right—here the right to receive just compensation when property is taken for a public use—in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit." *Dolan*, 114 S. Ct. at 2317. In *Dolan*, the Supreme Court held that a city cannot condition a building permit on a landowner's agreement to dedicate a portion of her property for public use (a pedestrian/bicycle pathway) without an adequate showing that "the required dedication is related both in nature and extent to the impact of the proposed development." *Id.* at 2319–21.

The government would not be able to make the requisite showing here. As discussed above, the government's interest in licensing broadcast spectrum is limited to ensuring that such spectrum is used in the public interest. Even if the public interest requires that political candidates be given access to that spectrum, that interest does not extend to providing candidates free access to the broadcaster's facilities, personnel, and programming. To the extent that the

¹ It is sometimes argued that broadcasters have no property rights in their licenses because they are granted by the government only for a specified term and may be altered during their term to avoid interference problems. See generally, *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940). This argument, however, disregards the fact that there is a legitimate renewal expectancy, and that there must be truly compelling cause for revocation of the license during its term.

² The pending legislation, however, does not appear to be reasonably susceptible to such an interpretation in its current form because it applies to cable operators—who are not licensed—as well as to broadcasters. See *supra* n.4.

pending legislation could be viewed as a condition on broadcast licenses, therefore, that condition would be an unconstitutional taking of property without just compensation.

B. The Pending Legislation Would Deny Broadcasters Equal Protection of the Law.

The pending legislation also would require only broadcasters to make such financial contributions to political candidates. Candidates incur expenses from a variety of other sources, from newspapers to printers, yet no other media or private citizens are compelled to contribute money, goods, or communicative services to candidates as a means of reducing the costs of federal election campaigns. Selectively placing the burden of campaign finance reform primarily on broadcasters would raise fundamental equal protection concerns.

Classifications that impose unequal burdens on the exercise of fundamental rights are suspect under the equal protection principles of the Fifth Amendment. See, e.g., *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972). Any regulation that singles out one segment of the media for differential treatment and unequal economic burdens is also constitutionally suspect under the First Amendment. *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983). Such governmental action can only survive if it is narrowly tailored to serve a substantial governmental interest. *Mosley*, 408 U.S. at 99-101.

The pending legislation would fail to satisfy this standard. Broadcasting likely has been singled out to bear a disproportionate burden only because the bills' sponsors recognize that compelling political speech would be flatly unconstitutional if applied to any other media. Neither scarcity nor any other justification could support a law that would require broadcasters to subsidize the American federal electoral system. The government's interest in enhancing the integrity of that system is indeed substantial, but shifting much of the cost of federal elections to a selected medium neither directly advances nor is narrowly tailored to that interest. If the governmental goal is to subsidize the cost of federal campaigns, then the equal protection principles of the Constitution require that this burden be distributed fairly and equally.

Conclusion

The pending legislation would attempt to advance the laudable goal of campaign finance reform, but its means of achieving that goal would raise insuperable constitutional concerns. Congress cannot compel anyone, including broadcasters, to finance federal candidates' partisan political speech. The existing "reasonable access" of political candidates to broadcast time is increasingly suspect under modern conditions and evolving interpretations of the First and Fifth Amendments. The pending legislation's proposals to extend that mandate to provide free access to broadcast time to such candidates not only would disrupt the "delicate balance" of existing law but would raise additional constitutional difficulties, further erode broadcasters' journalistic freedom, and render the "reasonable access" mandate even more susceptible to successful challenge. Those who take comfort from past judicial decisions sustaining regulation of broadcasters should realize that those decisions at a minimum do not support the proposed legislation and likely no longer represent the Supreme Court's view on the permissibility of treating broadcasters differently than other media, at least in this context.

Senator MCCONNELL. [Presiding.] Thank you, Mr. DeVore.

I must say, in listening to the testimony, Mr. Taylor, Professor Barber sounded like the "speech police". They basically don't like the quality of political discourse. Mr. Taylor, you said that 30-second ads are "designed not to persuade your supporters to vote for you but to convince your opponent's supporters not to vote at all."

There's no evidence of that, no evidence whatsoever.

I'm curious as to whether you've even seen any positive campaign ads. For example, biographical spots on candidates to introduce them to the voters, or clearly legitimate comparison ads so that you compare the records of opponents. Have you ever seen any of those?

Mr. TAYLOR. I see a lot of them. I think the conversation in campaigns, unfortunately, tends to be dominated by the negative spots.

There's a book that came out earlier this year called "Going Negative" by a couple of political scientists, one at MIT and one at UCLA, I believe, that makes this very case, that analyzes the impact of negative ads and concludes they do shrink the electorate.

Senator MCCONNELL. Well, if that's true, then obviously you would prefer that the candidate who's ahead in the polls always win. Is that what you think would be preferred here, that the government should somehow control the content here so that whoever is ahead ends up ahead?

Mr. TAYLOR. Not at all. I like the back-and-forth of campaigns. That's what was fun about covering them while I covered them.

Senator MCCONNELL. You just want it to go on in the newspaper, though, and not on television?

Mr. TAYLOR. No. No, I just want it to go on among the candidates, not among "talking cows" or other devices, that I think do work because they do shrink the electorate and they do drive people out of the public square.

Senator MCCONNELL. That's essentially an elitist view. In other words, you want to restrict how the candidates can reach the voters.

I'll tell you, it's my observation that there's a sizeable group, so-called "good government" groups, muckraking journalists, and pseudo-populist politicians, who basically foment and feed off of cynicism. I might say that I don't like the speech of the newspapers. As a matter of fact, there are many days when I conclude I don't like the speech of the newspapers, but I'm not introducing some bill to try to control the content of editorial pages, which certainly have an enormous impact on a political race.

It's not just the ads. The overall areas of communication, across the board, whether it's large group, independent expenditure, endorsements or oppositions to candidates, newspaper speech, all of that is part of the free flow of information back and forth across the American political system, all protected by the First Amendment.

But it seems to me that reporters typically only find the speech of others offensive. They want to clean up this political discourse. They don't like it.

I don't know if any of you have read about any of the campaigns of the previous century. You should have lived then; you would have been truly appalled, because the political

discourse in the previous century was considerably worse by any standard than it is now.

In fact, what we've got here is an effort by the professional, sort of "good government" groups around town, allied with people like yourself, who are offended by the quality of speech going on out there in the land. I would say that your former profession has done about as much to feed the cynicism in the public as anybody, and I know you've conceded that that's a part of it. But I don't see you recommending any solutions to that side of the equation.

For example, when is the last time any of you saw on television or read in the newspaper a story pointing out that the overwhelming majority of Members of Congress are honest, hard-working people? Has anybody written a story like that? I haven't seen it.

So maybe what we ought to be doing is trying to craft some kind of measure here to clean up the content of the newspaper coverage while we're at it. All of this speech out here is just sort of messing up the political landscape.

You also tried to blame low voter turnout on political commercials. There's no evidence of that. No studies, no evidence whatsoever. In fact, turnout was up in the presidential race in 1992. It was up in '94 over '90, races in which there was more candidates, more candidates filing, more money spent. In fact, Mr. Taylor, there's a direct correlation between the amount of money spent in campaigns and the turnout.

Show me a race in which there's very little money spent and I'll show you a race that basically is asleep. You've got a safe incumbent, you've got a puny challenger, there's very little spent, very little discussed, the race stays asleep, and the turnout goes down. In what way is that a desirable result?

MR. TAYLOR. I think it would be highly undesirable. I'm not for restricting anybody's speech. I'm for trying to craft a new way of talking in campaigns that I believe is manifestly healthier, and it has to do with allowing direct communications from candidate to citizen.

If I could just comment on your comment about reporters being too cynical, I agree with that. There was a content analysis of the coverage of the presidential primaries, and the reporters covering it get six times more air time than the candidates running in it. I think there's something a little off there.

My notion is, rather than restrict the reporters' free speech, rather than restrict the candidates' free speech, if they want to pay for their ads and do whatever they think will win elections, I think that's a democracy and I'm all for that. But what I think does get lost in the current way we do business is this direct, straightforward communication from candidate to citizens, and I think we are all harmed by that loss.

SENATOR MCCONNELL. Junk food, it seems to me, is in the eye of the beholder. I watch the President and I find that junk food.

I find the President's speeches junk food. I find the President's campaign ads, which have been running for five months in my state, junk food. I don't have a proposal, however, to shut him up.

I don't have a proposal to tell him how he can deliver his message. It seems to me he is entirely free, under the First Amendment, to deliver his message in any way he so chooses.

So I'm not going to take an elitist view that we must tell these pedantic candidates exactly how to communicate with the public.

MR. TAYLOR. I don't take that view, Senator. I take the view let's carve out a new way to talk, that I think is manifestly more efficient, more effective and healthier, and let the system do whatever the system wants to do on its own dime and its own time. Let's try to carve out something a little bit different to see if we can reengage citizens into the public square.

As to your comments about voter turnout, I think if you look at the longer term of the television era, voter turnout has gone rather precipitously down. It did come back up last year, almost entirely as a result of a very viable, independent candidate, and that's fine.

Senator MCCONNELL. Right. And you are also familiar, I assume, with the studies that indicate that many people feel that the reason we have relatively low voter turnout in this country is because (a) we have a very content democracy, compared to other democracies, and (b), I'm sure you also know, Mr. Taylor, that in many democracies people are required to vote and are, in fact, fined when they don't vote. It's like getting a traffic ticket.

There is one democracy—and I forget which one—one in Western Europe, in which your name is posted if you don't vote. It's sort of like getting a scarlet letter on your forehead. So this apoplexy that we go through about voter turnout it seems to me is nonsense on its face. What it really is is an excuse to try to tell the candidates what they can say in their own commercials.

Now, you advocate, I gather, significant blocks of time in which the candidates basically just express themselves, right?

MR. TAYLOR. That's exactly right.

Senator MCCONNELL. What about a candidate who is physically unattractive?

MR. TAYLOR. The American public understands there are some candidates who are more attractive than others. They get it. They get it.

Senator MCCONNELL. Would Abraham Lincoln have been at an advantage—

MR. TAYLOR. Absolutely. I mean, it's a completely hypothetical question, but—

Senator MCCONNELL. It is a hypothetical question.

MR. TAYLOR. But if you look at—Senator, what you seem to be saying is that the candidate, if you create a dynamic where the

candidate talks directly to the citizens, the good looking or good talking candidate will win.

Let's look over the history of Presidents in the television era. Was Dwight Eisenhower a glib, good-looking guy? Was Richard Nixon a glib, good-looking guy, or Lyndon Johnson? There's been a mix.

Senator MCCONNELL. What opportunities do the candidates now have to do that now? There are at least three presidential debates and one vice presidential debate and they are sort of institutionalized now.

Mr. TAYLOR. We do a lot of it, and I think they're terrific. I think that's exactly what I'm trying to compliment. We now have institutionalized, sort of organically, without passing a law, the notion that you ought to debate a few times if you run for office. Let's not try now to institutionalize a short format for a few minutes a night, in what could become a kind of running debate. You go on TV tonight, your opponent goes on TV tomorrow night. You put it in the middle of prime time, where you get the biggest audience, and you talk straight to the American people.

Whatever else you want to do in your campaign, however other ways you want to communicate, it's a democracy and you get to do it. Let's at least have this new way to—

Senator MCCONNELL. What if I don't want to do that? What if it's a matter of campaign strategy, that I don't want to do that?

Mr. TAYLOR. Let's create a voluntary scheme that incentivizes you to do that, rather than the current system, which incentivizes you to run negative ads in which you may not appear, that spends 30 seconds explaining the warts and the foibles and the shortcomings of your opponent. If we have a conversation going that way campaign after campaign, you say the low turnout is the result of apathy and contentment. I look at polls which say three-quarters of the American public reflexively distrust their government—

Senator MCCONNELL. As a good reporter, you didn't listen to me. I said, compared to other democracies, if you were comparing apples and apples. Some of these democracies require people to vote.

Mr. TAYLOR. I think very few democracies require people to vote. A handful do.

Senator MCCONNELL. Some do. As a result of that, it has an incredible impact on turnout. People don't want to be fined.

Mr. BARBER. Senator, as a professor of political science, may I respond briefly to your comments?

Senator MCCONNELL. Yes.

Mr. BARBER. You would have to name for me which western democracies require people to vote and what the punishment is.

Senator MCCONNELL. The punishment is not severe. They're usually fines.

Mr. BARBER. What I can tell you is that a majority—indeed, almost all western democracies—provide free air time for candidates.

I'm not sure what legislation we're discussing here this morning, because in listening to your comments, it sounds like we're discussing the censorship of political speech, whereas what I thought we were discussing was free air time for candidates. You were concerned about the suggestion that some of us had made to go beyond—

Senator MCCONNELL. Professor, I was not debating you. I was talking to Mr. Taylor about some of his other proposals. I didn't have any questions of you, actually.

Mr. BARBER. Well, if I may just say, since I did make some proposals about additional constraints that could be used, this legislation is about another kind of censorship which I'm surprised, with your concerns for free speech, you don't find equally important, and that is the censorship that occurs for those Americans who can't afford five, ten, or fifteen million dollars to run for Congress or run for the Senate and who have to buy their time to talk to their fellow citizens.

What this legislation is about is creating a equal playing field where time is available for citizens who want to run for office to talk to their fellow citizens. That's what the issue is about.

If the government chooses to put some further constraints on the conditions for buying that time, it might be willing to do so, but this is not what this legislation is about. This legislation is clearly about trying to prevent those who now control our speech—and you haven't talked about that. There is no speech police that I know of out there except the networks. That is to say, currently they control speech in the sense that they say, if you want to speak on our network, you've got to pay "x" dollars per second to do so. That seems to me to create an unequal playing field and an unfair basis for the competition of politics. That's where the control is coming from in our system, not from the government and not from the speech police.

The CHAIRMAN. [Presiding.] Let me just follow on with you, Professor.

There is a great deal of controversy today over what is a negative ad. I happen to be involved in a pretty intense campaign myself at the moment. If there's something about what I have done and—in other words, I did it, and my opponent did it, but it doesn't necessarily enhance either of us to have it disclosed, is that a negative ad?

Mr. BARBER. Senator, I don't think it's the appropriate job of us right here to try to say what a negative or a positive ad is. What is clear is that many Americans and many politicians and statesmen are rightly concerned about the quality of our campaigns and about the civic deliberativeness of those campaigns. To the extent we can find ways that do not impact on the content of speech, that permit forms of debate and forms of

civil exchange that enhance that process, I think they're good and I would not want to prejudge specific ones, nor would I want anyone to be in a position to say you can't run that ad if you don't want to.

But certainly we can try to model more positive forms of civic debate that can raise the level of our debate, increase the civility of our debates, and create a situation in which Americans can learn as they debate about policies and politics.

The CHAIRMAN. You talk about your independent board.

Mr. BARBER. Yes. I'm suggesting there that there's the possibility of creating a bipartisan committee, independent of the government, that looks at and sets certain standards. Those standards can be relatively loose. I think Paul Taylor's notion that you put not a maximum time, which could be censorship—you could only speak for a minute—but to require that you use at least two or three minutes, is a very good way to guarantee that people act a little more intelligently, because in three minutes you simply can't do a sound bite and you're forced to do more than sound bites. That's probably a good thing.

We are in a sense saying people should be forced to speak more, not forced to speak less. I think that's not censorship but an opening towards civility.

The CHAIRMAN. Do you have any views on this negative versus positive, Mr. Taylor?

Mr. TAYLOR. I don't mind the negativity of politics. Politics is a contest of your ideas and your character and your record. I don't like the low blows, the false inferences, the distortions that you get in so many 30-second ads, that particular kind of attack. Everybody knows how it's done and often you don't even have to misstate a fact in a 30-second low blow. You can juxtapose an image against eerie music and a voice-over, leave the viewer to the conclusion that something really wrong is going on here.

This is what we do to ourselves as a society in campaign after campaign. Is it any wonder that the citizens watch this and then two-thirds of them at the end of the campaign say I don't have any interest in this. You know, I'm not going to vote, and I think they're all a bunch of bums up in Washington.

We shouldn't do this to ourselves as a society. We're a better democracy than that. So go back and forth, by all means. Attack the other guy by all means. I believe, with the simple format restriction of the candidate always on screen, you eliminate 80, 90, 95 percent of the low blows. The candidate doesn't want to be associated with a low blow.

The CHAIRMAN. Back to you again, Mr. Taylor.

What do you think is the bigger problem in our country, the public's apparent distaste for the political process, or the public's lack of detailed knowledge about candidates and the issues?

Mr. TAYLOR. I think the former. We live in a total information society. You can get information. If you are a consumer of

information, you can find it on that television screen or in your newspapers. It's there. People edit their universe. It's that they're so disgusted by it that they choose not to receive it.

If we begin to break the cycle of distrust and cynicism, we will have a better informed electorate.

The CHAIRMAN. I would hope so.

You propose that the free TV idea be extended to congressional candidates after it is tested in the presidential race. Once this concept moves along, how do you keep the local candidates? I keep coming back to this. Maybe I've got a tough hang up, but I've got to deal with it.

Mr. TAYLOR. Oh, I think it's a real hang up. It is very difficult to get a single, all-encompassing model that solves some of the problems that were discussed earlier, of so-called urban glut. What are you doing in New York with 35 congressional districts and Lord knows how many races for sheriff?

I don't think there's a single answer, and that's one of the reasons why these various campaign bills offer some combination of air time and franking. That's one way to acknowledge circumstances are different.

Another notion I have had, and a lot of people have had, is you give blocks of free air time not to individual candidates but to political parties. This is the way it's done in most of Western Europe. And then every political party in every media market has to decide which of it's candidates are—

The CHAIRMAN. They're the arbiters, then, as to how to deal with this?

Mr. TAYLOR. What's that?

The CHAIRMAN. They're the arbiters as to how to—

Mr. TAYLOR. Yeah, and I think that in some sense strengthens the political parties, which I think is good for democracy.

The CHAIRMAN. Oh, yes.

Mr. TAYLOR. It may be that they get into a lot of fights between the sheriff and the candidate for governor, but those are good fights for democracy. So that would be another approach.

The CHAIRMAN. I say this from many years of experience—and I'm very happy the way I'm received in Virginia. But they let me know that that candidate for sheriff is what we're really concerned about down here. That's just one of the challenges to make this work.

Professor Barber, do you have some thoughts on how we begin to work out the scale of priorities among the numbers of candidates?

Mr. BARBER. I do. I think it has a little to do with where we start, though. If we see this as the private property of broadcasters and then try to figure out how to carve up what little time we can either win from them or they volunteer to give us, it's a very, very tough problem. It puts the ball in our court.

There is another way to view it, though, and that is to say that the primary purpose of the public airwaves should be civil

education, should be our democratic politics, should be the opportunity to do whatever we have to do to fight out our campaigns and contest them, and whether with negative or positive forms of exchange, do just that and make available that time and say what's left over can be left over for the broadcasters.

Now, I understand that's neither a popular nor a feasible position right now, given the sense right now that the broadcast airwaves belong to those who currently are licensed to use them. But I would suggest a change in how we view it. I mean, you're asking us to address how such scarce time can be divided up among so many needy candidates, and I'm saying those needy candidates are all needy, they all deserve time, if our democracy is going to work.

How much time are we willing to give to make democracy work? That's the real question. I would say we need more time to divide up, if we have a lot of sheriffs out there.

The CHAIRMAN. If they can stay in business, I suppose it's endless.

Well, gentlemen, work into those responses any other thoughts that you have on these issues. One thing that concerns me is at what point do we say to radio and newspapers and so forth, other means of communication, you're going to have to share a proportionate burden with the electronic.

Mr. GELLER. I just want to say, not from campaign finance reform but from the point of view of public trustee, you might just say to the stations you have a duty to not only do broadcast journalism but to do this electronic soapbox. All of you can get together in an area and figure out what are the hot races. It might be sheriff, it might be Senator, it might be Congressman. Make sure you're not all focusing on all of them. Work together and try to spread that time over those candidates who really need exposure, because the judgment of the broadcasters is it's an important race, where there hasn't been this communication by the candidates to the public.

That would be a contribution. It wouldn't be a solution. It would simply be, as they say, one more step that would serve to inform the electorate.

The CHAIRMAN. Mr. DeVore, what is your view?

Mr. DEVORE. All this talk about and the very practical questions about what happens with all the other races, state and local, this is like Brer Rabbit and the tar baby, Mr. Chairman. Once you start this process, I really do believe there's no end to it. It just illustrates the problems you get into when government tries to get into the control of speech. That's really what we're talking about here. It really is kind of a bottomless pit.

I think you get to be kind of a Rube Goldberg machine. You keep trying to invent new ways to be fair, to allocate, and who's going to allocate. It's all very well to talk about voluntary panels,

but if they have a cachet of the Senate in doing it, then we've got the state involved in doing it to one degree or another.

You come back to the fundamental problem that this is an unconstitutional provision. The way you avoid these incredible complexities is to stay out of that thicket.

One last comment on Mr. Geller. He and I are old friends, and we discuss issues with each other at least on an annual basis, if not more frequently. I think if you read his written remarks, you will see perhaps where the thing that really divides us on this scarcity issue, on the constitutional perspective, is really just time. I think that he states in his analysis that this technological revolution has taken place, and he's not quite sure how far it's going to go, what the Internet is going to mean, how all these things are going to function.

We just disagree on how far that revolution has come along already. I think he even suggests that it's possible this revolution can go so far that *Red Lion* and its scarcity concept will be gone—

The CHAIRMAN. Outdated.

Mr. DEVORE. Yes, it's outdated. I think that has happened. I think the revolution has happened adequately for that to be the case today. So we perhaps don't fundamentally disagree. It's a question of where the critical mass is.

The CHAIRMAN. That's a very interesting concept, with the information, the super highway and all the rapid developments—As a matter of fact, I leave here to go down and watch a class of young children, eight or ten, putting something into the computers in their schools and hooking it up to the Internet. It's exciting.

Did you have any thoughts, Mr. Taylor, on this concept of the constitutionality, where this line is between Congress moving and sending the bill on over to Judiciary, or sit back here and try to assess it?

Mr. TAYLOR. I defer to Mr. Geller. He's older and wiser.

The CHAIRMAN. All right.

Mr. GELLER. Let me just say, in answer to Mr. DeVore, you have to make policy for the next 10 years. In the next 10 years, there is the scarcity that was referred to in *Red Lion*—more people wanting to broadcast than there are available frequencies. Some time in the next century, we both agree that you're going to get so much abundance out there in a digital environment that you won't even be able to tell the difference between a newspaper, broadcast, or direct broadcast satellite. It's all going to be just digits, bits are bits. But you're not there and you have to legislate now.

I would strongly recommend, from the point of view of communication policy, that *Red Lion* is the law. I agree with Mr. DeVore, that you can't tell what the present Supreme Court will do. But as long as it remains the law, you have every right to adopt that as your policy. Say it's *Red Lion* and all the provision has to do is be reasonably related to the public interest and send

it to the Judiciary. It's up to them to overrule *Red Lion*, and there is no clear indication that they will do so.

The CHAIRMAN. Let's sort of have the last word here for each person, and then we'll wrap up this panel.

Professor?

Mr. BARBER. Thank you, Senator.

I just want to simplify for a minute and remind us all that democracy depends primarily on communication. It's a form of government that depends on communication—on viable communication, on thoughtful communication, on deliberative communication, on angry communication. It's a government by communications, which means that the resources for communication have to be available to citizens for democracy to work.

I think we can all agree that democracy is in some trouble right now in America, where so many Americans are not voting. Many others have shown lowered measures of social trust in their institutions, including this Congress.

Yes, there is the danger, as Mr. DeVore says, of the Brer Rabbit, kind of more and more. But the question is, how many resources will we make available to help make democracy work, or will we require, that citizens and people wanting to run for office have to always buy those resources in order to be candidates for office.

I think what the present legislation does is create the possibility of devoting more resources to democracy. I can't think of anyone who would want to say that, currently, democracy has enough resources. It needs more resources'

If this bill can help to devote a little more resources to the quality and extent of communications and lower the impact of money on elections, then I think it will have done a great work for the American people.

The CHAIRMAN. That's very clear.

Mr. Taylor, how about the last word? You started all this.

Mr. TAYLOR. Thank you.

Very briefly, I think our current system of campaigning is broken, and it's broken at its worst place, on television. The public has lost confidence in campaigns and we ought to try to fix both the campaign finance side of it and the discourse side of it. I think each adds to the other and each would help restore confidence.

There are no perfect fixes. I am sensitive to the criticism that when you try to regulate the political realm, you invite a lot of problems. We have a lot of problems at the moment. Let's not let the perfect be the enemy of the good and let's try to make things a little better.

The CHAIRMAN. If either of you have further information or sources or bibliographies, please provide them to us. If you have suggestions, having presumably listened to what I have described as the series of hearings to date, on other areas in which you feel there's an obligation for us to probe—I think

we've pretty well covered it, with the exception perhaps of more emphasis on the presidential level—I would very much appreciate that, because the ranking member and I, together with other members of the committee, have to assess where we are after these hearings and whether or not an additional hearing or two is necessary. I would very much value your thoughts on that.

Thank you very much, gentlemen. The committee stands in recess.

[Whereupon, at 12:25 p.m., the committee adjourned.]



Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

IS THERE REALLY TOO LITTLE MONEY IN POLITICS?

Public Citizen Responds

by Robert F. Schiff, Staff Attorney

Opponents of campaign finance reform have a new mantra. In 1994, they raged against "welfare for politicians." Now the main refrain for House Speaker Newt Gingrich (R-GA), conservative think tanks like the Heritage Foundation and the Cato Institute, and other apologists for the status quo is: "There's not enough money in politics." The new mantra indicates a "profound misunderstanding," as Speaker Gingrich might say, of the problems with our current system of financing campaigns and of the public's mood on this issue.

Gingrich and his allies are fond of comparing the total amount spent on political campaigns with the amount that Americans spend to buy, or advertisers spend to sell, pet food, bubble gum, antacids, potato chips, or soft drinks, to name a few. The total amount spent on campaigns, about \$724 million in 1994, is indeed a small portion of our gross national product. That's why Public Citizen has always felt that public financing of congressional campaigns wouldn't break the budget and would be a great investment for our democracy.

But these comparisons are grossly misleading. Politicians aren't corporations selling a product. They don't fund their advertising from a company treasury, which they can then replenish with sales receipts. They have to solicit all of their campaign money--and that is the problem.

The average winning Senate candidate spent \$1.2 million in 1980, \$3.3 million in 1990, and \$4.6 million in 1994. The average winning House candidate spent \$516,000 in 1994. That's an enormous amount of money to raise. Running for federal office is increasingly a game that only the rich can play. Those who are not rich must spend inordinate amounts of time raising money. To raise \$4.6 million, a sitting Senator has to take in an average of nearly \$15,000 per week for his or her entire six year term. A challenger who starts raising money in the last two years would have to collect an average of \$45,000 per week.

Virtually every Senator complains about the fundraising demands of the office. When Sen. Sam Nunn announced that he would not seek a fifth term, he said: "Too

Ralph Nader, Founder

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much of the time and efforts of Members of Congress are consumed by fundraising efforts. The ability to raise big money and buy saturation television ads have become the dominant theme of our political races." The overriding need to raise money means that Members of Congress can't spend the time they need to spend studying the issues and meeting with their constituents.

The problem is not merely the amount of time candidates have to spend raising money, but who they have to raise it from. To accumulate the warchests necessary to run competitive races, candidates have to cater to interests with deep pockets. Only 1/2 of one percent of the population made a political contribution of more than \$200 in 1992. Those very wealthy individuals and lobbyists and executives who control the checkbooks of corporate PACs become the best friends a Member of Congress can have. It is naive to believe that this has no effect on the ability of a Member to act in the public interest.

Of course, special interest funds are readily available to incumbents who have the power to act on legislation favored or opposed by the money givers. But challengers find it much harder to raise the money needed to fund competitive campaigns. In the last House election, 76% of PAC contributions went to incumbents and only 9% to challengers. The average incumbent spent \$546,000 seeking reelection, while the average challenger spent only \$128,000. No wonder that over 90% of House incumbents were reelected, even in the supposedly "revolutionary" election of 1994.

H.R. 2566 and S. 1219, the Bipartisan Clean Congress Act that has been endorsed by Public Citizen, attempts to end the treadmill of endless fundraising and loosen the bonds of special interest money on Congress. Voluntary spending limits combined with significant media benefits for those who abide by them will result in fairer, less expensive, more competitive elections. Spending less time on fundraising will give lawmakers and candidates more time to spend with their constituents and work on policy. Special interests will have less control over legislation. The political process will greatly benefit from these changes.

With his new mantra of "there is not enough money in politics," and comparisons of politics to junkfood, Speaker Newt Gingrich trivializes the devastating effect that the current system has had on the public's confidence in Congress. H.R. 2566 and S. 1219, bipartisan legislation that President Clinton has indicated he will sign, offers the best hope to wrest the Congress back from special interests and allow the voices of average citizens to be heard again on Capitol Hill.

Public Citizen

NEWS RELEASE

FOR IMMEDIATE RELEASE
August 4, 1995

Further Information:
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REPORT LINKS TOP 10 "PAY-BACKS" IN HOUSE SPENDING BILLS TO CORPORATE CAMPAIGN MONEY

BANKERS, PETROLEUM REFINERS AND U.P.S. AMONG BIG WINNERS

Public Citizen released a report today detailing the corporate campaign contributions responsible for "Top Ten Special Interest Pay-Backs" added to House Appropriations bills passed this week. These Appropriations provisions — many in the form of tacked-on amendments known as "riders" — contain special rules, exemptions and loopholes that change existing laws at the behest of specific companies or industries that gave millions of dollars in contributions to Members of Congress, especially key appropriators.

"This is a transparent abuse of the Appropriations process to reward special interest campaign contributors," said Joan Claybrook, president of Public Citizen. "It is outrageous that the bankers, petroleum refiners and other interests have been able to finagle costly benefits on spending bills that cut tens of billions of dollars from programs for needy seniors, students, the unemployed and the poor."

"These ten pay-backs may be manna for the lobbyists, but will cost the public dearly in terms of increased workplace injuries, food poisoning, contaminated drinking water, air pollution and more expensive student loans," Claybrook added.

The attached list of "Top Ten Special Interest Pay Backs" includes regulatory exemptions and giveaways intended to benefit major corporate political action committee (PAC) donors that range from the petroleum refining industry (for a Clean Air Act toxics standard exemption), to the United Parcel Service (to block OSHA ergonomic injury rules), to the American Bankers Association (to block expansion of the direct student loan program).

Each of these ten special interests made major investments in campaign contributions to current members of Congress and to senior members of the House Appropriations Committee in particular during the 1993-94 election cycle. For example, UPS pushed aggressively for a rider prohibiting the Occupational Safety and Health Administration (OSHA) from even studying ergonomic injuries, let

- more -

alone issuing or enforcing standards to protect workers. UPS donated more than \$2.6 million to congressional campaigns during the 1994 election cycle, including \$263,415 to members of the House Appropriations Committee. Only four of the committee's 56 members managed to miss UPS's generosity.

Although some of the particular "riders" identified here were the subject of intense debate before passage, Public Citizen's report represents an important effort to reveal the specific corporate PACs behind these narrow pay-back provisions and exactly how much money they gave to Congressional appropriators and leadership to earn these indulgences.

By focusing on PAC contributions, the report clearly understates the influence of these particular interests because it excludes individual contributions as well as so-called "soft-money" contributions to political party committees, both of which are heavily weighted toward corporate donors. Moreover, most of the "key special interests" targeted in the report are only selected examples of beneficiaries and proponents of appropriations pay-backs.

Nevertheless, the report shows that targeted investing in the political process can pay off handsomely. Seven narrow industry groups and three individual corporations donated \$1,112,580 to members of the House Appropriations Committee and were rewarded either with licenses to pollute and injure workers or with good, old-fashioned corporate welfare worth, in some cases, billions of dollars.

"They promised a revolution, but the new Republican majority is practicing pork as usual," said Michael Calabrese, director of Public Citizen's Congress Watch. "They promised to cut corporate welfare, but instead this Congress is dealing the American people a one-two punch. They're handing out welfare checks to the wealthiest corporations and paying for it by shifting the costs to workers, consumers, students and even other businesses that will now face an unlevel playing field."

As the special interest provisions emerged from the Appropriations Committee over the past month, their way was smoothed by contributions to other influential members of the new House leadership. House Speaker Newt Gingrich (R-GA) received \$58,362 from PACs associated with nine of the selected special interests examined in the report.

Calabrese noted that while the House passed only one floor amendment to cut current corporate welfare subsidies -- stripping \$20 million in funding to terminate the Gas Turbine Modular Helium Reactor program -- the Republican majority added scores of special interest provisions for big contributors. Calabrese pointed to an exemption for petroleum refineries from meeting technology standards to reduce toxic air pollution. "This is pure corporate welfare at the public expense. Local governments will have to shift the costs of meeting EPA standards from the oil industry to other businesses, many of which are already in compliance with current standards. Meanwhile, toxic air pollution will continue to destroy the lungs of Americans, particularly vulnerable people like the elderly and children."

#

ATTACHED: "TOP 10 LIST" AND "PAC \$ CONTRIBUTIONS CHART"

TOP TEN SPECIAL INTEREST PAY-BACKS IN FISCAL YEAR 1996 APPROPRIATIONS BILLS

1. Prohibition of Direct Student Loan Expansion

This Education Appropriations provision would prohibit the planned expansion of the direct loan program, potentially costing the taxpayer as much as \$12 billion. The Department of Education wants to loan directly to students, rather than guaranteeing loans made by private banks. Guaranteed student loans are an egregious piece of corporate welfare, allowing banks to generate profit on a safe spread over the cost of capital while taxpayers assume the full risk of the loan. Direct lending would either save the taxpayer money or allow more lending. The House prohibited expenditure of extra administrative funds needed to expand the pilot program.

Key Special Interest Beneficiaries: Banking Association PACs

Total Contributions to Members of Congress 1993-94: \$2,027,717

Total to House Appropriations Committee: \$106,154

2. Petroleum Refining Exemption from Clean Air Act Toxic Emission Standards

A rider to the House VA/HUD appropriations bill bars use of EPA funds to develop, issue or enforce air toxics Maximum Achievable Control Technology (MACT) standards governing the petroleum refining industry. Petroleum refiners are 12th among 174 sources of toxic air pollutants. MACT standards would reduce hazardous emissions from 190 petroleum refineries by 68% and reduce total hydrocarbon emissions by some 750,000,000 pounds per year. Refineries emit large quantities of benzene, methyl ethyl ketone, toluene and significant quantities of volatile organic compounds (VOCs), which are a major cause of ground-level ozone, an extremely dangerous form of pollution that can cause permanent lung damage.

Allowing refineries to pollute more would force local governments to shift the cost of achieving EPA standards from refineries to other sources, including other industrial and commercial companies, many of which are already in compliance with existing standards. The loophole also creates an unfair disadvantage for refining companies that have moved aggressively to meet MACT standards.

Key Special Interest Beneficiaries: Petroleum Refining Industry

Total Contributions to Members of Congress 1993-94: \$2,002,703

Total to House Appropriations Committee: \$158,332

3. Block Research, Development, and Issuance of OSHA Ergonomics Standards

This Labor/HHS rider prohibits the Occupational Safety and Health Administration (OSHA) from even *studying* ergonomic injuries, let alone issuing standards to prevent them. Ergonomic injuries or repetitive stress injuries like carpal tunnel syndrome are the most rapidly growing category of work-related injury. The standard would affect dozens of employers, but according to a report in the Wall Street Journal, United Parcel Service was instrumental in engineering the introduction and passage of the rider.

Key Special Interest Proponent: United Parcel Service

Total Contributions to Members of Congress 1993-94: \$2,647,113

Total to House Appropriations: \$263,415

4. Supermajority Vote Required for NLRB Enforcement Action

A rider to the Labor/HHS appropriations bill would require a four-fifths vote by members of the National Labor Relations Board NLRB before NLRB could proceed in enforcement matters. The National Labor Relations Board governs labor/management relations, including worker complaints of unfair labor practices. Because of current vacancies on the board, the provision would in effect require a unanimous vote before the Board takes enforcement action. Although the rider benefits all employers, the Wall Street Journal reported that the Overnite Trucking company and its parent Union Pacific pushed for the provision after the NLRB voted 3-2 to pursue an injunction.

Key Special Interest Proponent: Overnite Trucking/Union Pacific

Total Contributions to Members of Congress 1993-94: \$636,803

Total to House Appropriations Committee: \$53,650

5. Prohibit Removal of Cancer-Causing Pesticides from Food Supply

The Delaney Clause of the Food Drug and Cosmetic Act prohibits food additives known to cause cancer. EPA has set a five-year timetable -- under court order -- for phasing out the use of certain highly carcinogenic pesticides. A rider

offered by Rep. James Walsh (R-NY) prohibits the agency from spending appropriated funds to carry out the plan, placing the agency in an impossible position between a congressional mandate and potential contempt of court proceedings.

Key Special Interest Beneficiaries: Members of the American Crop Protection Association

Total Contributions to Members of Congress 1993-94: \$1,390,459

Total to House Appropriations Committee: \$167,036

6. Prohibit Safety Standards for Construction Falls Below 16 feet

A rider to the Labor/HHS appropriations bill raises from 6 feet to 16 feet the height at which companies much take measure/s to protect workers from falling injuries at construction sites. Falls are the fourth most common cause of workplace fatalities and are heavily concentrated in the construction industry. OSHA's standards requiring safety harnesses save dozens of lives a year. Falls from ten or fifteen feet can easily kill, particularly when workers are handling power tools.

Key Special Interest Proponent: BuildPAC (National Association of Homebuilders)

Total Contributions to Members of Congress 1993-94: \$1,329,599

Total to House Appropriations Committee: \$121,250

7. Exemption from OSHA Standard Banning Teenage Operators of Paper Ballers

OSHA prohibits workers under 18 from operating paper bailer machines, which crush cardboard cartons. These machines are very dangerous, and pose a particular hazard for teen workers who lack the experience and maturity to operate them safely. The rider would permit grocery and retail stores to assign teens to operate certain models.

Key Special Interest Proponent: National Grocers' Association

Total Contributions to Members of Congress 1993/94: \$724,774

Total to House Appropriations Committee: \$45,643

8. Upjohn's Free Ride

The House Appropriations Committee created a special exemption from the Federal Water Pollution Control Act for waste discharged by Upjohn to the Kalamazoo Water Reclamation Plant. Allowing Upjohn its own exemption gives the company an unfair advantage over companies which comply with the standard. Unlike many of the other special interests on the list, Upjohn appears to have purchased its ride for relatively little money. Although the company donated a substantial amount of money to Members during the last cycle, relatively little went to members of the Appropriations Committee.

Sole Special Interest Beneficiary: Upjohn

Total Contributions to Members of Congress, 1993/94: \$119,480

Total to House Appropriations Committee: \$4,000

9. Allow Workers Younger than 18 to Drive on the Job

Auto crashes are the leading cause of on-the-job fatalities, and younger workers are more prone to accidents. OSHA currently prohibits workers younger than 18 from driving on the job, with an exception for farm equipment. A rider to the Labor/HHS appropriations bill would prohibit OSHA from enforcing the rule.

Key Special Interest Proponent: National Automobile Dealer Association

Total Contributions to Members of Congress 1993/94: \$1,832,570

Total to House Appropriations Committee: \$157,000

10. Expansion of Timber Road Construction

Although many of the other provisions in this report involve paying back special interests by rolling back health and safety standards, the House did not neglect more traditional forms of appropriations giveaways to corporations. In the midst of devastating attacks on the EPA, the House Interior Appropriations bill contains increased funding for one of the most destructive federal policies -- construction of roads to assist logging operations in national parks. The Forest Service has already built 340,000 miles of roads for lumber companies, several times the length of the entire interstate highway system. A broad coalition of groups from across the ideological spectrum have identified timber roads as one of the "Dirty Dozen" most egregious corporate welfare programs, yet the House appropriated \$5.5 million more than even the Forest Service itself requested. The House also voted a 30% increase in the Department of Agriculture's Market Promotion Program, another "Dirty Dozen" corporate welfare program, which funds corporate advertising overseas.

Key Special Interest Beneficiaries: Timber and wood products industry

Total Contributions to Members of Congress 1993/94: \$382,878

Total to House Appropriations Committee: \$36,100

APPROPRIATIONS PROVISION	1	2	3	4	5
SPECIAL INTEREST	BANKS	REFINERY	UNITED PARCEL SERVICE	UNION PACIFIC	PESTICIDES
TOTAL \$\$ TO CONGRESSIONAL CAMPAIGNS	2,027,717	2,002,703	2,647,113	636,803	1,390,459
TOTAL \$\$ TO APPROP MEMBERS	106,154	158,332	263,415	53,650	167,036
Livingston (R-LA)	0	4,950	1,200	1,000	1,500
Okey (D-WI)	3,000	1,000	3,250	1,000	2,500
McDade (R-PA)	500	500	1,000	0	4,500
Myers (R-IN)	2,000	3,000	9,980	1,000	2,500
Young (R-FL)	0	500	2,200	0	1,200
Regula (R-OH)	0	0	0	0	0
Lewis (R-CA)	2,000	4,500	9,150	1,500	3,500
Porter (R-IL)	3,500	0	6,500	0	1,500
Rogers (R-KY)	4,000	8,000	7,900	1,500	4,000
Skeen (R-NM)	2,000	2,850	4,500	1,000	3,000
Woff (R-VA)	0	500	7,500	0	2,250
DeLay (R-TX)	2,000	14,250	6,475	2,250	11,300
Kolbe (R-AZ)	1,000	1,500	6,000	2,000	3,250
Vucanovich (R-NV)	3,600	8,500	6,500	1,500	4,250
Lightfoot (R-IA)	5,000	3,000	8,250	2,500	8,336
Packard (R-CA)	3,000	0	10,000	6,000	500
Callahan (R-AL)	0	3,500	7,000	0	3,000
Walsh (R-NY)	500	500	5,950	0	3,500
Taylor (R-NC)	1,250	4,000	5,500	1,500	5,750
Hobson (R-OH)	2,500	3,000	2,000	0	2,500
Istook (R-OK)	4,000	4,000	8,000	100	2,000
Bonilla (R-TX)	3,500	17,500	4,250	3,500	4,250
Krollenberg (R-MI)	4,850	0	500	0	0
Miller (R-FL)	500	0	5,500	500	0
Dickey (R-AR)	0	0	0	0	0

	1	2	3	4	5
Kingston (R-GA)	3,000	500	6,500	0	7,000
Riggs (R-CA)	4,454	5,032	2,000	1,000	1,500
Frelinghuysen (R-NJ)	0	1,000	5,000	0	1,850
Wicker (R-MS)	0	4,750	2,000	1,000	7,250
Forbes (R-NY)	1,000	850	2,000	0	0
Nethercutt (R-WA)	0	1,500	2,000	0	1,000
Bunn (R-OR)	1,500	3,000	1,000	1,500	500
Neumann (R-WI)	0	3,900	4,000	4,000	5,000
Yates (D-IL)	0	0	0	0	0
Stokes (D-OH)	0	500	5,000	0	0
Bevill (D-AL)	500	3,500	1,000	0	1,500
Murtha (D-PA)	1,000	4,000	0	3,500	3,000
Wilson (D-TX)	3,000	12,750	6,500	0	2,500
Dicks (D-WA)	0	1,000	7,000	500	1,000
Sabo (D-MN)	0	1,000	4,100	0	3,250
Dixon (D-CA)	0	0	6,000	0	0
Fazio (D-CA)	13,000	5,000	10,000	4,300	9,500
Heiner (D-NC)	1,000	0	3,500	0	5,500
Hoyer (D-MD)	12,500	1,750	9,750	2,000	6,000
Durbin (D-IL)	5,000	1,000	3,340	2,000	14,800
Coleman (D-TX)	500	3,500	9,500	3,500	1,500
Malkin (D-WV)	2,500	0	4,500	0	5,500
Chapman (D-TX)	2,500	12,000	6,000	2,000	4,300
Kaptur (D-OH)	500	0	1,750	0	500
Skaggs (D-CO)	2,000	2,750	7,000	0	1,500
Pelosi (D-CA)	1,000	500	5,500	0	0
Visclosky (D-IN)	1,500	1,000	4,360	0	500
Foglietta (D-PA)	0	2,000	4,500	500	2,500
Torres (D-VA)	0	0	4,000	0	500
Lowey (D-NY)	0	0	3,500	0	1,000
Thornnton (D-AR)	1,000	0	3,000	1,000	3,000

APPROPRIATIONS PROVISION	6	7	8	9	10
SPECIAL INTEREST	NATL ASSN OF HOME BUILDERS	GROCERS	UPJOHN	AUTO DEALERS	TIMBER & WOOD
TOTAL \$\$ TO CONGRESSIONAL CAMPAIGNS	1,329,599	724,774	119,480	1,832,570	382,878
TOTAL \$\$ TO APPROP MEMBERS	121,250	45,643	4,000	157,000	36,100
Livingston (R-LA)	0	1,000	0	2,500	0
Obey (D-W)	3,500	0	0	0	500
McDade (R-PA)	2,000	500	0	0	0
Myers (R-IN)	4,000	500	0	7,000	0
Young (R-FL)	0	2,000	0	2,500	0
Regula (R-OH)	0	0	0	0	0
Lewis (R-CA)	8,500	2,000	0	1,500	0
Porter (R-IL)	3,000	0	0	1,000	0
Rogers (R-KY)	1,000	1,500	0	2,500	0
Sreen (R-NM)	1,000	0	0	3,000	0
Walt (R-VA)	500	0	0	3,500	500
DeLay (R-TX)	2,000	1,250	0	10,000	0
Kolbe (R-AZ)	1,000	500	0	3,000	500
Vucanovich (R-NV)	5,000	2,500	0	4,000	0
Lightfoot (R-IA)	2,500	1,000	0	6,000	0
Packard (R-CA)	1,000	250	0	1,500	0
Callahan (R-AL)	1,000	4,000	0	4,000	2,350
Walsh (R-NY)	1,000	0	1,000	7,500	0
Taylor (R-NC)	5,000	2,622	0	4,000	4,650
Hobson (R-OH)	7,500	0	0	5,500	0
Istook (R-OK)	0	500	0	3,000	0
Bonilla (R-TX)	2,000	0	0	8,000	0
Knollenberg (R-MI)	2,000	0	500	3,500	0
Miller (R-FL)	2,500	0	0	3,000	0
Dickey (R-AR)	0	0	0	0	0

	6	7	8	9	10
Kingston (R-GA)	4,000	2,250	0	4,000	2,800
Riggs (R-CA)	2,500	1,850	0	10,000	3,500
Frelinghuysen (R-NJ)	0	0	500	2,500	0
Wicker (R-MS)	2,000	1,500	0	5,000	1,850
Forbes (R-NY)	0	1,500	0	0	0
Nethercutt (R-WA)	0	2,000	0	1,000	0
Bunn (R-OR)	3,750	1,000	0	10,000	7,000
Neumann (R-WI)	21,000	1,500	0	0	0
Yates (D-IL)	0	0	0	0	0
Stokes (D-Oh)	0	0	0	0	0
Bevill (D-AL)	1,000	0	0	2,000	2,000
Murtha (D-PA)	3,000	0	0	0	0
Wilson (D-TX)	3,000	0	0	10,000	0
Dicks (D-WA)	2,500	0	0	0	8,400
Sabo (D-MN)	1,000	0	0	0	0
Dixon (D-CA)	0	0	0	0	0
Fazio (D-CA)	7,500	500	1,000	0	0
Hefner (D-NC)	1,500	5,591	0	0	0
Hoyer (D-MD)	10,000	1,830	0	3,000	1,000
Durbin (D-IL)	1,000	0	500	2,500	0
Coleman (D-TX)	0	1,000	0	6,000	0
Molichan (D-WV)	1,500	0	0	0	0
Chapman (D-TX)	2,000	5,000	0	10,000	200
Kaplan (D-Oh)	500	0	0	0	0
Steggs (D-CO)	1,000	0	0	0	0
Pelosi (D-CA)	0	0	0	0	0
Visclosky (D-IN)	1,000	0	0	0	0
Foglietta (D-PA)	500	0	0	0	0
Torres (D-WA)	0	0	0	0	0
Lowe (D-NY)	0	0	500	2,000	0
Thornton (D-AR)	0	0	0	2,500	850

Methodology

Generally:

Public Citizen's Congress Watch examined Federal Election Commission records of donations from Political Action Committee's (PACs) of key special interest proponents or beneficiaries of provisions in FY1996 House Appropriations bills. FEC records examined covered the period from January 1, 1993 to December 31, 1994. Figures for total contributions include all donations to current members of the House and Senate. FEC records for the pesticide industry -- provision #5 -- were compiled by the Center for Responsive Politics. Congress Watch appreciates the Center's assistance.

By Interest Groups:

1. Banking PACs included banking trade associations, excluding mortgage banking trade associations, including the American Bankers Association, the Independent Bankers Association, Savings and Community Bankers of America, the Ohio Bankers Association, the Arizona Bankers Association, the Florida Bankers Association, the New York State Bankers Association, the California Bankers Association, and the Consumer Bankers Association.
2. Refineries included PACs of the publicly traded companies identified as refineries by their Standard Industrial Classification (SIC) codes from Securities and Exchange Commission filings including Amoco, Ashland Oil, BP America, Chevron, Coastal Corp., Crown Central Petroleum Corp., Diamond Shamrock R&M Inc., ELF ATOCHEM North America, Fina Oil and Chemical Company, Giant Industries, Kerr-McGee Corp., Louisiana Land and Exploration, MAPCO Inc., Murphy Oil USA Inc., Pennzoil Co., Phillips Petroleum Inc., Shell Oil Co., Sun Company Inc., Tosco Corporation, Total Petroleum Inc., Union Oil Company of California, and the Valero Energy Corporation.
3. United Parcel Service PAC.
4. Union Pacific Fund for Effective Government.
5. Pesticide donations were compiled by the Center for Responsive Politics in their May 22 1995 report "Pesticide PACs to Current Members of Congress, 1993-1994."
6. BuildPAC, the Political Action Committee of the National Association of Homebuilders.
7. Groceries included PACs of the publicly traded companies identified as such by their SIC codes from SEC filings including the DELCHAMPS Inc., Dairy Mart Stores, American Stores Company, Food Lion Inc., Great Atlantic and Pacific Tea CO. Inc., Kroger Co., National Convenience Stores Inc., Ralph's Grocery Company, Safeway Stores Inc., Southland Corporation, and Winn-Dixie Stores Inc.. Additionally, trade associations representing grocery firms were counted including the Food Distributors Voice in Politics Committee, the National Grocers Association PAC, and the National Association of Convenience Stores.
8. Upjohn Employees PAC.
9. Dealers Election Action Committee of the National Automobile Dealers Association.
10. Timber and wood interests included the trade associations of the Forest Industries PAC of the American Forest and Paper Association, the Southeastern Lumber Manufacturers Association, and the Texas Forestry Association. Also included were PACs of the publicly traded companies identified as lumber and wood products companies by their SIC codes from SEC filings including Boise Cascade Corporation, Coastal Lumber Company, Georgia-Pacific Corp., Louisiana Pacific Corp., Roseburg Lumber Corp., and the Weyerhaeuser Co..



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Joan Claybrook, President

The Bipartisan Clean Congress Act

Campaign finance reform is alive and kicking in the U.S. Congress. For the first time in over a decade, bipartisan, comprehensive campaign finance bills have been introduced in both the House and the Senate. The bills are H.R. 2566 (Smith-Shays-Meehan) in the House, and S.1219 (McCain-Feingold) in the Senate.

The cost of a seat in Congress now routinely exceeds a half a million dollars. Only those who are wealthy themselves or rely on wealthy contributors can run for federal office. And even in the "revolutionary" 1994 elections, over 90% of the incumbents who ran were reelected. This legislation contains a number of very important reforms to limit the influence of special interest money and end the advantages now held by incumbents.

The key provisions of H.R.2566 are described below. Differences between that bill and S.1219 are noted as necessary.

Voluntary Spending Limits and Benefits for Complying Candidates

House candidates are asked to agree to spend no more than \$600,000 in an election cycle, and no more than \$60,000 of their own personal wealth. The limits are raised when the candidate has a contested primary or a runoff election. Candidates who agree to abide by the limits become eligible to purchase their radio and television advertising at half price. They also can send three mailings to every voting age resident of their district at a reduced rate.

The voluntary spending limits in S. 1219 vary according to state populations. Participating Senate candidates receive 30 minutes of free time on TV, half price TV ads, and two reduced mailings; they do not receive a reduced rate for radio ads.

Limits on Special Interest Contributions

PACs are banned under these bills. If that ban is unconstitutional, PACs may only contribute \$1,000 per election to a candidate (down from \$5,000). In addition, House candidates may accept no more than 25% of the spending limit (\$150,000) from all PACs combined. (In S.1219, the aggregate PAC limit if the ban is unconstitutional is set at the lesser of 20% of the spending limit or \$875,000.)

Large contributions are also limited. No more than 25% percent of the spending limit (\$150,000) can be raised in contributions of greater than \$250. If this limit is unconstitutional, it becomes a condition for receiving benefits under the voluntary spending limits system. (S.1219 does not contain a similar provision.)

Ralph Nader, Founder

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Out of state contributions are also limited. No more than 40% of the contributions that a candidate receives from individuals can come from out of state. Again, if this limitation is unconstitutional, it becomes a condition of participating in the spending limits system. (In S.1219, this provision only applies to participating candidates.)

Lobbyists are prohibited from contributing more than \$100 to House candidates. (S.1219 does not contain this provision.)

Protections for Participating Candidates

Candidates who participate in the voluntary spending limit system also receive some protection in the event their opponents refuse to accept the limits or break the limits after agreeing to abide by them. These protections are particularly needed to offset the power of the "millionaire opponent." In such situations, the spending limits are increased in two stages up to a maximum limit of \$1.2 million. In addition, contribution limits for individual contributions (and PACs if they still exist) are raised to \$2,000. (The Senate bill has a one time 20% increase in the spending limit and the same variable contribution limit as the House bill.)

In addition, spending limits are raised dollar for dollar so that candidates can respond to independent expenditures against them. (S.1219 does not contain this provision.) The bill provides for prompt reporting of independent expenditures and tightens the definition of such expenditures to assure that they are truly independent of a candidate's campaign.

Other Key Provisions To Close Loopholes in Current Law

Soft money is banned. Currently, corporations and wealthy donors give millions of dollars in "soft money" to national and state parties that is not subject to the restrictions of federal law.

Leadership PACs are banned. Members of Congress currently run separate fundraising operations that raise millions of dollars from special interests in addition to the money they raise for their campaigns. (This provision is not in the Senate bill.)

Bundling is banned. This fundraising practice allows lobbyists to collect individual contributions from corporate executives and give them in a bundle that totals far more than a PAC could give.

Mass mailings under the congressional frank for the year prior to an election are prohibited.

Personal use of campaign funds is banned.

One term limit for FEC Commissioners (not in Senate bill) and other FEC reforms.

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PUBLIC CITIZEN

MAJOR ISSUES IN CAMPAIGN FINANCE REFORM

Comparison of H.R.2566 and S.1219

The attached chart compares H.R.2566 and S.1219, the first bipartisan efforts to reform our nation's campaign finance laws in a decade. The chart shows how each of the bills addresses the most significant problems with the current system.

1. **Voluntary spending limits** -- The Supreme Court has held that Congress may not impose mandatory spending limits on election campaigns. It may, however, offer benefits to candidates who voluntarily agree to limit spending. Campaign finance legislation, therefore, often provides for spending limits to which candidates are asked to agree in exchange for certain benefits. The limits take into account the possibility of primary, general, and runoff elections and sometimes provide exemptions for certain types of expenditures, such as legal and accounting costs.
2. **Benefits for candidates who accept limits** -- These benefits serve as the incentive to induce candidates to agree to limit their spending. Some bills in previous years provided for participating candidates to receive partial public funding for their campaigns, along the lines of the matching fund system from presidential primary elections. While this kind of benefit would be the best way to encourage adherence to spending limits and level the playing field between incumbents and challengers, most recent proposals do not include public funding but rely instead on free or reduced rate television advertising and mailings.
3. **Threshold contributions and other conditions for benefits** -- In order to assure that only serious candidates receive benefits, most proposals specify a threshold amount that candidates must raise (sometimes in small contributions or from residents of their state or district) in order to qualify. In addition, some proposals include additional conditions other than agreeing to spending limits with which participating candidates must comply. This allows Congress to encourage compliance with certain requirements that would raise constitutional questions if they were made mandatory.
4. **Contribution Limits** -- Current law provides that individuals may contribute no more than \$1,000 per election to a candidate, and \$25,000 to all candidates and political parties combined. PACs can contribute \$5,000 per election per candidate, with no limit on total contributions. Reform proponents generally suggest reducing one or both of these limits to decrease the influence of a single giver on a candidate and make campaign funding more democratic. Others argue that the limits should be increased to make it easier for candidates to raise necessary funds.
5. **Loans and personal spending by candidates** -- These provisions concern the use of a candidate's personal wealth for a campaign. The Supreme Court ruled in *Buckley v. Valeo* that Congress cannot place limits on donations by individuals to their own campaigns. Personal spending limits therefore must be voluntary. Restricting the amount that candidates may lend their own campaigns, on the other hand, is permissible.
6. **PACs** -- Multicandidate political committees, commonly known as PACs, currently can contribute \$5,000 per election to a candidate, \$5,000 per year to another political committee, and \$15,000 per year to a national political party. There is no limit on the total amount that candidates can raise from PACs or on the total amount that a PAC can contribute to all candidates. The use of PAC giving as a lobbying tool has become commonplace. These provisions address contributions by PACs in an effort to limit the influence of campaign money on the legislative process. Banning PACs altogether presents serious constitutional questions. Fallback provisions, in case a ban is found unconstitutional, are therefore essential.
7. **Soft Money** -- A significant loophole in current law allows corporations, labor unions, and wealthy individuals to contribute huge sums to national and state political parties. The parties supposedly may not use these "soft money" contributions to influence federal elections. Instead, they are spent by state parties on so-called "party building activities" like voter registration drives and get out the vote campaigns, but are often directed to states where important federal races are occurring. In the first six months of 1995, the Republican party raised over \$20 million in soft

money; the Democrats raised over \$10 million. These unlimited fat cat contributions make a mockery of the campaign finance laws, putting the political parties up for sale to the highest bidder.

8. **Bundling** -- An increasingly disturbing trend in political fundraising is bundling. While PAC contributions are limited, a company's lobbyist can collect unlimited numbers of \$1,000 checks from its executives for a candidate. A bundle of checks totalling \$20,000 or more buys more influence than a PAC contribution. If PACs are limited or banned, this loophole will become even more important.
9. **Leadership PACs** -- Leadership PACs are PACs set up by members of Congress to further their political goals, whether by contributing to other candidates to win support in a leadership contest or to explore a run for higher office. They offer PACs and wealthy individuals yet another opportunity to contribute and buy access to a member. There are no restrictions on the kinds of things on which leadership PACs can spend their money; often much of the money goes to pay for travel by the member, meals, or gifts to supporters and friends.
10. **Out of state fundraising** -- Some proposals condition a candidate's receipt of benefits on meeting a certain ratio of in-state to out of state contributions, others severely limit out of state contributions for all candidates or ban them entirely. Restricting individuals from supporting or opposing federal candidates financially even if they cannot vote in their elections raises serious constitutional concerns.
11. **The Frank** -- Members of Congress are permitted to use the congressional "frank" to send mail to their constituents. The cost of such mailings is paid out of the federal treasury. Many send mass mailings that sometimes resemble campaign flyers. Current law prohibits use of the frank for mass mailing during the 60 days preceding a primary or general election in which the member is running.
12. **Lobbyist contributions** -- Campaign contributions are an important tool of the modern lobbying operation. There have been reports of lobbying firms increasing the compensation of their employees with the expectation that they will make contributions to members in key legislative positions. Some proposals suggest limiting or banning lobbyists from contributing to congressional campaigns. While popular, these proposals raise significant constitutional concerns.
13. **Independent Expenditures** -- In recent ears, huge amounts of election spending has been done by groups acting "independently" of parties or candidates, with the NRA's highly publicized campaigns to defeat representatives who voted for the assault weapon ban being the best examples of the practice. These campaigns are constitutionally protected under *Buckley*, but Congress may act to make sure that the spending is truly independent, rather than coordinated or arranged with one side or the other in a campaign. Some proposals in the past have provided for public funds to be available for a candidate to respond to an attack by an independent expenditure. The growing prevalence of independent expenditures must be recognized in designing a voluntary spending limits system.
14. **Personal use of campaign funds** -- Current law prohibits the personal use of campaign funds. The FEC has recently established new regulations to give guidance on what exactly "personal use" means. Some bills attempt to put clearer definitions and guidance in the statute.
15. **FEC provisions** -- It has been nearly 20 years since Congress passed the last amendments to the statute governing the FEC's powers. The FEC and outside organizations have made numerous proposals to improve the disclosure of campaign finance information and enforcement of the law.
16. **Severability and judicial review** -- Because of the complex constitutional questions raised by campaign finance reform legislation, it is extremely important for the legislation to specify the affect of a court ruling striking down some provisions of the bill. "Severability" refers to whether a provision that is unconstitutional can be "severed" from the rest of the bill, or will cause the whole system to be thrown out. Likewise, the legislation should anticipate constitutional challenges and attempt to assure that a court case will cause a minimum amount of disruption to the first election under the new system.



MAJOR ISSUES IN CAMPAIGN FINANCE REFORM

Comparison of H.R. 2566 and S. 1219

ISSUE	H.R. 2566 (Smith-Shays-Meehan)	S. 1219 (McCain-Feingold-Thompson)
1. Voluntary spending limits	Spending limit is \$600,000 per cycle, adjusted for inflation. Candidates may spend an additional \$180,000 if they have a contested primary (i.e., margin of victory is 10% or less). An additional \$120,000 is available for runoff elections. Spending limit is raised by \$300,000 if opponent does not agree to limit spending and spends more than \$630,000. Limit raised an additional \$300,000 if opponent spends more than \$930,000.	General election spending limits are based on state population and range from \$950,000 to \$5.5 million, adjusted for inflation. Primary election spending limit are 2/3 of the general election limit with a maximum of \$2.75 million. Candidates involved in runoff elections may spend an additional 20% of the general election limit. Spending limits are raised by 20% if opponent does not agree to comply with the limits and raises more than 10% of limit or spends more than 10% of the limit from personal funds.
2. Benefits for candidates who accept limits	No direct public funding. Candidates who agree to spending limits and meet other conditions may purchase TV and radio time at 1/2 of the "lowest unit rate" (which is what they now are charged) and send three district-wide mailings at 3rd class rates.	No direct public funding. Benefits for candidates who accept limits are: (1) 30 minutes of free prime time TV; (2) Paid TV ads at 1/2 of the lowest unit rate; (3) Two mailings to all voters in state at 3rd class rates.
3. Threshold contributions and other conditions for benefits	To qualify for benefits, a candidate must agree to comply with the spending limits and raise 10% of the limit (\$60,000) in contributions of \$200 or less. 30% of that amount must come from residents of district, and 60% must come from in state residents. Must also agree to limit personal spending (see below). In order to receive benefits, a participating candidate must have an opponent who has raised or spent 10% of the election cycle limit (\$60,000).	Must agree to spending limit and raise lesser of 10% of general election limit or \$250K from individuals, of which 60% must be from in-state residents. No small donor requirement. Must agree to limit out of state contributions (see below). Must agree to limit personal spending (see below).
4. Contribution limits	Individual contribution limit of \$1,000 per election per candidate is unchanged, but raised to \$2,000 if nonparticipating opponent spends more than \$150,000 in personal funds or raises over \$300,000 (including personal spending). PAC limit decreased to \$1,000 per election if PAC ban is unconstitutional (see below). All candidates may raise only 25% of spending limit (\$150,000) in contributions larger than \$250. If this aggregate large donor limit is declared unconstitutional, it becomes a condition for receipt of media and postage benefits.	Individual contribution limit of \$1,000 per election unchanged, but raised to \$2,000 if opponent chooses not to comply with spending limit and raises over 10% of that limit or spends over 10% of the limit in personal funds. PAC limit reduced to \$1,000 per election if PAC ban is unconstitutional (see below). No aggregate large donor limit.
5. Loans and personal spending by candidates.	Loans from candidate or family cannot be repaid with money raised after election. Also, to receive benefits, participating candidate must agree to limit personal expenditures (including family money) to \$25,000.	No provision on personal loans. To receive benefits, participating candidate must agree to limit personal expenditures to lesser of \$250K or 10% of general election spending limit.

6. PACs	<p>PACs banned. In the event that provision is unconstitutional, an alternative provision (often referred to as a "fallback") applies. Under that provision, the amount a PAC can give to a candidate is reduced from \$5,000 to \$1,000 per election. In addition, candidates may raise only 25% of the spending limit from PACs (known as an aggregate limit).</p>	<p>PACs banned. Fallback if unconstitutional: \$1,000 per candidate per election; not counted for purposes of in-state requirement; aggregate PAC receipts cannot exceed 20% of total spending limit.</p>
7. Soft money	<p>Soft money is banned through the following provisions:</p> <p>(1) National party committees may only solicit, receive or spend funds that are subject to the limitations, prohibitions, and reporting requirements of the Act ("hard money"); (2) State party committees that engage in activities that might influence a federal election, including party building activities like GOTV or voter registration campaigns, and any communication that identifies a federal candidate must pay for those activities with "hard money." (3) Political parties cannot solicit from or donate to 501(c) organizations; (4) Candidates for federal office and federal officeholders can only solicit or receive hard money, even for a state election, except if the officeholder is a candidate for a non-Federal office; (5) Candidates for federal office or federal officeholders cannot establish or control a 501(c) organization that raises money from the public, nor can such candidates or officeholders raise money for a 501(c) organization if that organization carries out voter registration or GOTV activities. The bill also eliminates the building fund exemption from the definition of contribution and requires that persons of entities other than political parties disclose expenditures of more than \$2,000 on activities such as GOTV and voter registration that might influence a federal election.</p>	<p>Same as H.R.2566 except (1) no prohibition on federal candidate or officeholder's controlling or raising money for 501(c) organizations; (3) no prohibition of federal candidate or office holder raising money for a state election; (3) no elimination of building fund exemption from definition of contribution.</p>
8. Bundling	<p>Bundling by PACs, party committees, corporations, partnerships, labor unions, and lobbyists generally prohibited. No exception for EMILY's List or similar groups.</p>	<p>Essentially the same as H.R.2566 in intent and effect, minor variations in language.</p>
9. Leadership PACs	<p>Banned 12 months after enactment.</p>	<p>No specific provision relating to leadership PACs. If PAC ban is unconstitutional, leadership PACs could continue to operate.</p>
10. Out of state fundraising	<p>60% of all individual contributions must be raised from in-state residents. If that requirement is unconstitutional, it becomes a condition for receipt of media and postage benefits as in S.1219.</p>	<p>To receive media and postage benefits, at least 60% of individual contributions raised by candidate must from in-state residents.</p>
11. The frank	<p>Prohibits use of frank by House member during even numbered years; includes other franking reforms. Funds saved by these reforms are designated to pay for mail benefits available to qualifying candidates.</p>	<p>Prohibits use of frank for mass mailings during a year in which a Member is a candidate for election.</p>

12. Lobbyist contributions	Registered lobbyists and foreign agents may not contribute more than \$100 per election to any federal candidate. This limit also applies to political committees controlled by the lobbyist or foreign agent.	No similar provision.
13. Independent Expenditures	(1) Definition -- Tightens definitions in a variety of ways, e.g., provides that expenditures are not independent if person making expenditure has been a fundraiser for a candidate, or has consulted with same media advisor or other consultant working for candidate. (2) Disclosure -- Independent expenditures aggregating \$10,000 or more made 20 or more days before an election must be reported to the FEC within 48 hours. Expenditures aggregating \$1,000 or more made within 20 days of the election must be reported within 24 hours. (3) Protection -- For candidate who has agreed to spending limit, if independent expenditures in support of opponent aggregate \$25,000 or more, and if total independent expenditures combined with spending limit of opponent exceed opponent's spending limit, then complying candidate may spend an amount equal to the independent expenditures without that amount counting toward to the spending limit.	Definition provisions similar to H.R.2566, but no disclosure or protection provisions.
14. Personal use of campaign funds	Prohibits use of campaign funds for any "inherently personal purpose"; provides definitions, examples, and guidance; instructs FEC to promulgate rules.	Same as H.R.2566.
15. FEC provisions	Numerous amendments sought by FEC and outside groups to strengthen enforcement and disclosure, including random audit authority, changes in civil penalties; simultaneous registration of candidate and committee; require computer filing by large committees; require more identifying info from PACs; prohibit use of contribution without disclosure of complete contributor information; monthly reporting option; and independent litigation authority.	Smaller number of FEC provisions including injunction authority, random audit authority, computer and fax filing authority, and require disclosure of contributor information for any contribution of \$50 or greater (current law is \$200).
16. Severability and judicial review	If any provision of the Act is held unconstitutional, the remainder of Act is unaffected. Provides for expedited review by Supreme Court of any decision regarding constitutionality of the Act. Provides that U.S. Court of Claims has exclusive jurisdiction over a takings challenge to the broadcast media provisions of the bill and the only remedy if such a challenge is successful is money damages.	Same severability and expedited review provisions as H.R.2566. Does not include provisions concerning a takings challenge.

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April 10, 1996

The Honorable John Warner
 United States Senate
 Chairman
 Committee on Rules and Administration
 Washington, DC 20510-6325

Dear Senator Warner:

On February 26 you were good enough to write me with respect to filing information additional to my statement at the first Senate Rules Committee hearing on S. 1219, dealing with campaign finance reform.

I take the liberty of enclosing a slightly more complete explanation of the conclusions that I had previously expressed upon the constitutionality of S. 1219. I shall be pleased if you find it helpful.

With best wishes.

Sincerely,

Archibald Cox
 Professor of Law, Emeritus

AC/cm
 Enclosure

STATEMENT OF ARCHIBALD COX
BEFORE
THE SENATE RULES COMMITTEE
ON
THE CONSTITUTIONALITY OF S. 1219
THE SENATE CAMPAIGN FINANCE REFORM ACT
APRIL 17, 1996

In considering the constitutionality of S. 1219, the Senate Campaign Finance Reform Act, it is essential to keep in mind that bill's important purpose: to restore public confidence in our democracy by lessening the role of money in political campaigns, and so in Congress. Today the ever-increasing torrent of campaign financing is destroying confidence in representative government. As phrased in a study done for the Kettering Foundation, today -

People believe two forces have corrupted democracy. The first is that lobbyists have replaced representatives as the primary political actors. The other force seen as more pernicious is that campaign contributions seem to determine political outcomes more than voting.

Included in S. 1219's broad goal to restore faith in democracy by lessening the role of money linked to lobbyists is the purpose to encourage the reduction of massive campaign expenditures and lessen the inequalities between candidates to whom huge private resources are available and their less well-funded opponents.

In 1974 Congress had sought to deal with these problems by imposing statutory ceilings upon a candidate's expenditures. In Buckley v. Valeo, 424 U.S. 1 (1976), the U.S. Supreme Court drew a basic distinction between campaign expenditures and campaign contributions. Legislative restrictions upon campaign expenditures by a candidate or an independent person in support of a candidate

were held unconstitutional because they would limit political expression "at the core of our electoral process and of First Amendment freedoms." *Id.* at 39. Restrictions on the size of any one individual contribution were held to be constitutional, nevertheless, because the limitation is appropriate to check corruption and the appearance of corruption.

Justices White and Blackmun dissented from the ruling that a legislative ceiling cannot be imposed upon campaign expenditures. *Id.* at 257-266. A good many commentators agree with the two Justices. See Stein, *The First Amendment and Campaign Finance Reform*, 44 Rutgers L. Rev. 743 (1992). Others have sought to circumvent the decision by novel constitutional theories. *E.g.*, Bonifaz and Raskin, *Equal Protection and the Wealth Primary*, 11 Yale Law & Policy Rev., No. 2 (1993). Perhaps some day that Buckley ruling may be overturned, but it seems pretty clear that today the Justices would reaffirm it. S. 1219 has therefore turned to other methods of reducing the inequalities in the financial resources available to candidates and of accomplishing a limitation of campaign expenditures.

Buckley v. Valeo itself points the way. The Federal Election Campaign Act Amendments, whose constitutionality was then at issue, established the present system of financing campaigns for a Presidential election. In the general election the major party candidates can choose whether to hold their campaign expenditures below a statutory ceiling and, in return, receive full federal funding up to the ceiling or, in the alternative, to raise and

spend private contributions without limit on total expenditures.

The Court upheld this arrangement, saying, (424 U.S. at 57, n. 65):

Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure ceilings. Just as a candidate may voluntarily limit the size of contributions he chooses to accept, he may decide to forego private financing and accept public funding.

S. 1219 takes a parallel approach. Section 101 proposes ceilings on Senate candidates' expenditures that would sharply cut back the present rates of expenditure, and it offers very substantial benefits to the candidates who voluntarily accept the ceilings. The ceiling in each State would be determined by a formula based upon the State's population. The formula leads to ceilings well below recent rates of expenditure.

Candidates who elect to observe the ceilings and further qualify by raising 10 percent of the limit in voluntary contributions chiefly from individuals in their home States would receive benefits in the form of (1) discount postage for two mass mailings to all individuals of voting age in their constituencies, (2) a total of 30 minutes of free broadcast time, and (3) 50 percent reduced rates for purchased broadcast time. In addition, if an opponent of a complying candidate chose not to observe the expenditure ceiling, the ceiling on individual contributions to the complying candidate would be raised from the normal limit of \$1,000 to \$2,000. The hope of the proponents of reform is that these benefits will induce most candidates to accept and comply with the proposed expenditure limits.

A.

Critics argue that this part of S. 1219 violates the First Amendment because the conditioning of the benefits upon the acceptance of a limitation upon expenditures is coercive. The critics invoke such precedents as Speiser v. Randall, 357 U.S. 513 (1958), striking down a State law conditioning a veterans' exemption from the general property tax upon filing an oath that the taxpayer does not believe in overthrow of the government by force and violence. The short answer is that the benefits offered certainly put less pressure upon a candidate to accept the expenditure limit than the proffered government funding of the full cost of an opponent's campaign if he accepts the ceiling, which the Supreme Court has already held not to violate the First Amendment in Presidential elections. Buckley v. Valeo, 424 U.S. 1 (1976); Republican Nat. committee v. FEC, 445 U.S. 955 (1980), affirming 487 F. Supp. 279 (S.D.N.Y. 1980).

The critics of S. 1219 respond that the provisions dealing with Presidential election campaigns were not challenged under the First Amendment in Buckley v. Valeo and that, when they were so challenged as unconstitutional conditions by the Republican National Committee, the Supreme Court merely affirmed a district court opinion without explaining its reasoning.

But the reasoned explanation is not far to seek. Even though some aspects of the unconstitutional condition cases are a puzzle, it is clear that the government may refuse to subsidize the exercise of an otherwise unfettered constitutional right even when

it subsidizes an alternative course of action. For example, Medicaid payments may be made available to women who choose natural birth but withheld from those who choose abortion. Harris v. McRae, 448 U.S. 297 (1980); Maher v. Roe, 432 U.S. 464 (1977). Similarly, food stamps may be withheld from otherwise eligible families that have become needy because a family member is on strike. Lyng v. International Union, UAW, 485 U.S. 360 (1988). Professor Tribe explains (Tribe, American Constitutional Law (2d ed. 1988), §11-5, at 783) --

government's power to set the terms on which it sets a subsidy must be thought to include at least some power to restrict not only how that very subsidy is used but also certain other activities of the subsidized person or entity when those activities bear a close enough relationship to the use of the subsidy.

Under S. 1219 the relationship would be close indeed. The aims of the government's proffer of benefits in the proposed legislation, as in Buckley, are "to reduce the deleterious influence of large contributions upon our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising. Buckley v. Valeo, 424 U.S. 1, 91 (1976). To grant the benefits provided by S. 1219 without conditioning them upon acceptance of the limitation on total expenditures would merely add to the evils the subsidy is intended to correct.

Even if the proffer of benefits to those who accept the expenditure ceiling were thought to put some pressure upon First Amendment rights, that limited pressure is justified by the

important purposes of the limited proffer. For although Buckley held those purposes to be insufficiently compelling to support a statutory expenditure ceiling, they are sufficient to justify the lessened pressure of the proffer of a limited subsidy which every candidate is free to accept or reject. See Republican National Committee v. Federal Election Comm., 487 F. Supp. 280, 285 (S.D.N.Y. 1980), affirmed 445 U.S. 955 (1980).

B.

Some of the benefits offered to candidates who accept the ceilings may be challenged upon particular grounds.

1. The discounted postage seems indistinguishable in kind from the monetary subsidy in Buckley, and thus plainly valid.

2. Sections 102 and 103 awarding free and reduced-cost broadcast time conceivably could be challenged by broadcasters, but any such constitutional challenge seems almost certain to be unsuccessful. Congress already requires broadcasters to sell time to candidates only at lowest unit rate, which itself is a benefit. This existing requirement, as well as the stronger requirements in S. 1219, are grounded on the familiar premise that Congress can impose reasonable regulations on a broadcast licensee's use of the airwaves, which are a public resource. Broadcasters are granted a license to use the public airwaves for commercial purposes so long as they serve the 'public interest.' The public interest is served by the reform bills requirement to provide free or reduced rate broadcast time to political candidates in the same way that the

Court in Buckley found that public financing met the General Welfare Clause -- it is intended "to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising." In Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), the Court upheld an FCC regulation requiring broadcast licensees to provide free air time to respond to personal attacks. Similarly, in CBS v. FCC, 453 U.S. 367 (1981), the Court upheld the rule establishing a candidate's right of access to broadcast time, noting that this provision "makes a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process." Id. at 396. Precisely the same public interest in the "effective operation" of congressional elections will be served by the broadcast benefit provisions of S. 1219.

C.

A slightly closer constitutional question is raised by Section 105, which provides that if an eligible candidate who complies with the expenditure ceiling is opposed by one who spends 10 percent in excess of the limit, then the standard \$1,000 limit on individual campaign contributions shall be raised to \$2,000 on contributions to the complying candidate. No Supreme Court precedent throws much light upon the issue. In Vote Choice v. DiStefano, 4 F.3d 26 (1st

Cir. 1993), the U.S. Court of Appeals for the First Circuit upheld an identical provision in a Rhode Island statute applicable to gubernatorial elections. In Kentucky the U.S. District Court invalidated a Kentucky statute limiting contributions to \$100 but allowing contributions of \$500 to candidates who comply with the ceiling. Wilkinson v. Jones, 876 F. Supp. 916, 928-930 (W.D. Ky. 1995). Notably the district court quoted the Vote Choice opinion with approval; it distinguished that decision and struck down the Kentucky statute only upon the ground that limiting contributions of non-complying candidates to the tiny sum of \$100 was "coercive," especially when compared with the \$500 ceiling applicable to complying candidates.

I find entirely persuasive both the reasoning of the First Circuit and the distinctions drawn by the U.S. District Court in Kentucky. The very fact that a candidate has accepted a voluntary ceiling lessens the danger that a \$2,000 contribution will be corrupting or have the appearance of corruption. In my judgment, the modest 2-to-1 differential proposed by the reform bills is constitutional.

D.

Gradually over the past 20 years the money contributed to candidates by the Political Action Committees formed by corporations, labor unions, trade and professional associations, and other groups has increasingly come to dominate election campaigns. Section 201 of S. 1219 pursues alternate approaches to

eliminating the undue influence of PACs. One provision would forbid PAC contributions to candidates and PAC expenditures in federal elections. The other provides that, if the first is held unconstitutional, the ceiling on PAC contributions shall be \$1,000 - the same limit presently applicable to contributions by individuals. The fall-back alternative also prohibits a candidate from receiving more than 20 percent of the applicable spending limit from PACs.

The constitutionality of the outright ban on PAC contributions and expenditures is open to question. For individuals to contribute money to a political candidate is an exercise of the constitutionally protected freedom of association, but the freedom is not absolute. Buckley v. Valeo, 424 U.S. 1, 25 (1976). Presumably, getting together to pool individual contributions to a candidate is also an exercise of freedom of association but is not absolute. The first question becomes one for Congress: whether PAC contributions to candidates are by their very nature so generally corrupting or have such an appearance of corruption as to warrant outright prohibition under Buckley v. Valeo. If Congress so finds, there is every reason to think that the Court would accept the finding and hold the ban on PAC contributions constitutional.

The constitutionality of the ban on PAC expenditures is more doubtful. If the expenditures is in any way coordinated with the candidate's campaign, then it is a contribution and may be prohibited if it would be corrupting or have the appearance of

corruption. If uncoordinated, the expenditure would fall between group expenditures which the Court has said may be prohibited (Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) and those who are protected by the First Amendment. FEC v. Mass. Citizens for Life, 479 U.S. 238 (1987).

The fall-back provision limiting PAC contributions to \$1,000 seems pretty plainly constitutional. If, based on the considerations set forth above, Congress determines that PAC money is playing too dominant a role in Congress and thus leading to an erosion of public confidence in its integrity, it is well within Congress' right to reduce the PAC contribution limit. The Supreme Court made clear in Buckley that it has no scalpel to probe when a ceiling on contributions should be five, three, two or one thousand dollars. 324 U.S. at 30. For precisely the same reason, the proposed aggregate limit on PAC contributions is supported by a compelling public purpose.

E.

Other essential provisions of S. 1219 close the "soft money" loophole which has perverted the present system of funding Presidential campaigns since 1988. Sections 211-215 would prohibit national parties from soliciting, receiving or spending money not subject to the federal act, and also forbid such activity by State or local party committees which during an election year engage in activities that might affect a federal election.

There can be no constitutional objection to subjecting the soliciting, receiving and spending of money that may affect a federal election to the requirements of federal law.

The Washington Post/January 31, 1996

*David S. Broder***'Frontline's' Exercise in Exaggeration**

As if the cynicism about politics were not deep enough already, PBS's "Frontline" last night presented a documentary called "So You Want to Buy a President?" whose thesis seems to be that campaigns are a charade, policy debates are a deceit, and only money talks.

The narrow point, made by Sen. Arlen Specter (R-Pa.), an early dropout from the 1996 presidential race, about millionaire publisher Malcolm S. (Steve) Forbes Jr., is that "somebody is trying to buy the White House, and apparently it is for sale."

The broader indictment, made by correspondent/narrator Robert Krulwich, is that Washington is gripped by a "barter culture" in which politicians are for sale and public policy is purchased by campaign contributions.

The program rested heavily on a newly published paperback, "The Buying of the President," Author Charles Lewis, the head of the modestly titled Center for Public Integrity, was a principal witness, and Kevin Phillips, the conservative populist author who wrote the book's introduction, was also a major figure in the documentary.

It dramatized the view asserted by Lewis in the conclusion of his book: "Simply stated, the wealthiest interests bankroll and, in effect, help to preselect the specific major candidates months and months before a single vote is cast anywhere. . . .

We the people have become a mere afterthought of those we put in office, a prop in our own play."

Viewers saw a number of corporate executives—no labor leaders, no religious leaders, no activists of any kind, for some reason—who have raised and contributed money for presidents and presidential candidates and thereafter been given access at dinners, private meetings or overseas trade missions.

It is implied—but never shown—that policies changed because of these connections. As Krulwich said in the transcript of a media interview distributed, along with an advance tape, with the publicity lot for the broadcast, "We don't really know whether these are bad guys or good guys. . . . I'm not really sure we've been able to prove, in too many cases, that a dollar spent bought a particular favor. All we've been able to show is that over and over again, people who do give a lot of money to politicians get a chance to talk to those politicians face to face, at parties, on planes, on missions, in private lunches, and you and I don't."

If that is the substance of the charge, the innuendo is much heavier. At one point, Krulwich asked Lewis, in his most disingenuous manner, "Do you come out convinced that elections are in large part favors for sale, or in tiny part?"

And Lewis replied that while "there are a lot of wealthy people that do want to express broad philosophical issues," the "vested interests that have very narrow agendas that they want pursued see these candidates as their handmaidens or their puppets. The presidential campaign is not a horse race or a beauty contest. It's a giant auction."

That is an oversimplified distortion that can do nothing but further alienate a cynical electorate. Of course, money is an important ingredient in our elections and its use deserves scrutiny. But ideas are important too, and grass-roots activism even more so. The Democratic Leadership Council's Al From and the Heritage Foundation's Robert Rector have had more influence in the last decade than any fund-raisers or contributors, because candidates have turned to them for policy advice.

John Rether of the American Association of Retired Persons and Ralph Reed of the Christian Coalition work for organizations that are nominally nonpartisan and make no campaign contributions at all. But their membership votes—so they have power.

The American political system is much more complex—and more open to influence by any who choose to engage in it—than the proponents of the "auction" theory of democracy understand, or choose to admit.

By exaggerating the influence of money, they send a clear message to citizens that the game is rigged, so there's no point in playing. That is deceitful, and it's dangerously wrong to feed that cynicism.

Especially when they have nothing to suggest when it comes to changing the rules for the money game.

At one point, Phillips said that the post-Watergate reforms succeeded only in having "forced them [the contributors and politicians] to be more devious." That is untrue. Those reforms, which mandated the disclosure of all the financial connections on which the program was based, also created publicity which, even Krulwich and Co. admitted, foiled the "plots" of some contributors.

And Krulwich, for his part, suggested very helpfully that "every high-profile politician agrees that some things have got to change. Change the limits. Change the rules. Change the primaries. Change the ads. Change enforcement. You gotta change something."

How about changing the kind of journalism that tells people that politicians are bought-and-paid-for puppets and you're a sucker if you think there's a damn thing you can do to make your voice heard?

SUPPLEMENTAL TESTIMONY OF

JAMES BOPP, JR.

**BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION
United States Senate
March 22, 1996**

Pursuant to the request of the Committee, I am pleased to submit this supplement to my testimony of March 13, 1996.

This supplemental written testimony will focus on the constitutional parameters for any campaign finance reform effort to be undertaken by this Congress. The United States Supreme Court has established this constitutional framework based on the requirements of the First Amendment to the United States Constitution. I believe that this framework is firmly established in the law and that the United States Supreme Court has shown no sign whatsoever that it is prepared to back away from ensuring full First Amendment protection to the political speech involved in campaigns. See *McIntyre v. Ohio Election Commission*, 115 S. Ct. 1511 (1995).

In examining this constitutional framework, I will comment on certain of the proposals, embodied in H.R. 2566 and S. 1219, which I believe are unconstitutional because they seek to limit First Amendment guarantees. I will then propose certain campaign finance reform measures which would pass constitutional muster and which would redress the imbalance and appearance of undue influence by certain "special interests" in our current federal election process by enhancing, rather than stifling, speech.

I. OVERVIEW OF CURRENT PROPOSED BILLS AND THEIR FAULTY PREMISES.

The current proposals before this Committee, H.R. 2566 and S. 1219, are based on certain premises that have been thoroughly rejected by the United States Supreme Court in the seminal election law case of *Buckley v. Valeo*, 424 U.S. 1 (1976), and reaffirmed since then. As a result of these faulty premises, the proposals themselves are fundamentally flawed and have diverted attention from reform measures that would survive constitutional scrutiny and correct current perceived problems in the political system. These faulty premises are as follows.

1. (Faulty Premise #1) The First Amendment Is a Loophole in the Federal Election Campaign Act (FECA) Which Should Be Narrowed or Closed.

As will be shown, the First Amendment protects political freedoms that are vital to our representative democracy. To limit these freedoms is to fundamentally undermine the ability of our citizens to freely select their representatives and to hold them accountable for their governance.

Congress has the duty to carry out its responsibilities consistent with the First Amendment. In this regard, it is particularly offensive that certain proposals are made which are so clearly unconstitutional that the proposals themselves contain "fall-back" provisions. If such proposals were adopted, not-for-profit groups and citizens would be forced to expend their own limited financial resources to vindicate their First Amendment rights against the vast resources of the Federal Government. This callous disregard of constitutional rights should be rejected.¹

2. (Faulty Premise #2) The Political System Is Only about Elections, Not about Political Ideas and the Accountability of Elected Officials to the Public for Their Positions on Issues.

The debate about campaign finance reform seems to focus only on elections on the assumption that the political process is only about elections. However, elections are only a part of the political process. More importantly, elections are simply a part of our system of democratic representative government which fundamentally depends on "the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Thus, issue advocacy during an election, even though it may influence the election, is also about the discussion of issues of public concern and about holding public officials accountable for their positions on these issues. Representative government cannot survive without this "free discussion of governmental affairs."

3. (Faulty Premise #3) The Rising Cost of Political Campaigns Justifies Severe Government Restrictions on Campaigns.

One of the sponsors of H.R. 2566, Congressman Marty Meehan, claims that "the rising cost of elections and the growing size of special interest donations has corrupted the Democratic process." On that basis, the Congressman believes that severe limitations on campaigns imposed by government are justified.

¹However, if such an approach is undertaken, at the very least the bill should include a provision similar to 42 U.S.C. § 1988, which would authorize an award of attorneys fees to private parties who are successful in any constitutional challenge to such a measure.

However, the United States Supreme Court has made it clear that it is up to the people, not the government, to determine what is spent on political campaigns. As the Court stated in *Buckley*, 424 U.S. at 57:

In any event, the mere growth in the cost of federal election campaigns in and of itself provides no basis for government restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns. The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people — individually as citizens and candidates and collectively as associations and political committees — who must retain control over the quantity and range of debate on public issues in a political campaign.

4. (Faulty Premise #4) The Only Way to Redress the Balance Is to Stifle the Speech of Some Rather than to Enhance it for All.

One of the sponsors of H.R. 2566, Congresswoman Linda Smith, believes that the system needs to change because it has “eroded the power of individual voices and amplified the voices of special interests.” In pursuit of equalizing speech, H.R. 2566 and S. 1219 take the approach of limiting, penalizing, and prohibiting speech of some in order to enhance it for others.

However, the United States Supreme Court has expressly rejected this proposition in *Buckley*, 424 U.S. at 48-49: “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.” Thus, this approach is fundamentally flawed.

But even more tragically, the “solution” of stifling speech diverts attention away from positive, constitutional measures which would redress the imbalance in the current system by enhancing the speech of citizens and issue advocacy groups. These speech enhancing measures would restore a proper balance between the voices of “special interests” and the voices of individual citizens.

One sponsor of H.R. 2566, Congressman Marty Meehan, believes that “the only way that meaningful reform will be enacted is for members to put aside partisan differences and work together to make it happen.” While this may be one necessary precondition to reform, it is not the fundamental one. For meaningful reform to occur, Congress must abandon the notion that it is empowered to limit free speech in order to redress any imbalance in speech and instead find ways to level the playing field by enhancing the speech of citizens and issue advocacy groups.

II. THE CONSTITUTIONAL FRAMEWORK OF ELECTION REGULATION.

The constitutional framework for Congressional regulation of elections was established in *Buckley v. Valeo*, 424 U.S. 1 (1976). This seminal case discussed certain fundamental principles of the First Amendment which must be observed for any act of Congress to be upheld. As will be noted, certain provisions of current proposals run afoul of these principles.

A. *Political Speech Is at the Core of First Amendment Protections.*

The First Amendment to the Constitution of the United States provides that

Congress shall make no law . . . abridging the freedom of speech, or of the press, or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

The authors of the First Amendment were not thinking about displaying obscene statements on jackets, *Cohen v. California* 403 U.S. 15 (1971), or even nude dancing, *Barnes v. Glen Theatre*, 501 U.S. 560 (1991), when they framed the First Amendment. The purpose of the First Amendment was to protect "indispensable democratic freedoms," *Thomas v. Collins*, 323 U.S. 516, 529-30 (1945), that make our representative form of government possible. Thus, the freedoms of speech, press, assembly, and petitioning our government protect the rights of citizens to participate in our representative democracy and to compete in "the marketplace of ideas." *McIntyre v. Ohio Election Commission*, 115 S. Ct. 1511, 1516 (1995)

Furthermore, "it can hardly be denied that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971).

Thus, it is undeniable that political expression is "at the core of our electoral process and of the First Amendment freedoms." *Buckley*, 424 U.S. at 44 (citing *Williams v. Rhodes*, 393 U.S. 23 (1968)).

B. *Issue Advocacy Is Protected Against Government Regulation.*

For the purpose of regulation by government, issue advocacy must be distinguished from active electioneering. Because "free discussion of the problems of society is a cardinal principle of Americanism — a principle which all are zealous to preserve," *Pennkamp v. Florida*, 328 U.S. 331, 346 (1946), issue advocacy may not be regulated and enjoys the highest forms of First Amendment protection.

The reality, however, as the Court noted in *Buckley*, 424 U.S. at 42, is that

the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are often intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

Because of this reality, the Court has not allowed the regulation of issue advocacy, but has established the bright-line “express advocacy” test to protect issue advocacy from regulation. As a result, “as long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views.” *Buckley*, 424 U.S. at 45.

C. Only Express Advocacy Is Subject to Government Regulation.

According to the United States Supreme Court in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1985), “*Buckley* adopted the ‘express advocacy’ requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons.”

The express advocacy test requires “explicit words” or “express terms” expressly advocating the election or defeat of a clearly identified candidate, such as “vote for,” “support,” or “defeat.” So defined, the Court has upheld the requirement that independent expenditures which contain express advocacy must be disclosed, *Buckley*, 424 U.S. at 74-81, and the prohibition of express advocacy by business corporations. *MCFL*, 479 U.S. at 249.

However, the definition of “express advocacy,” contained in § 251 of H.R. 2566 and S. 1219, seeks to blur *Buckley*’s bright line by encompassing issue advocacy within the definition of “express advocacy.” It does so by encompassing communications that do not contain “explicit words of advocacy” and by going beyond the words spoken by interpreting them based on “external events.” As found by the United States District Court in Maine with regard to the attempt by the Federal Election Commission to adopt a similar definition, this definition is unconstitutional. *Maine Right to Life Committee v. Federal Election Commission*, 1996 WL 65143 (D. Me. Feb. 13, 1996).

D. The Government May Impose Reasonable Contribution Limits.

While the Court in *Buckley* found that the First Amendment protection for political expression encompassed both political contributions and expenditures, the Court upheld a \$1,000 limit on contributions to candidates. The Court did so by finding that the First Amendment right involved was overcome by the compelling interest in “the prevention of

corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." *Buckley*, 424 U.S. at 25. Thus, reasonable contribution limits are constitutional.²

However, there are limits to how low contributions limits may go since the compelling interest is limited to the "coercive influence of large financial contributions." As a result, contribution limits of \$100 and \$300 have been struck down. See *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994); *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995).

E. *Independent Expenditures, Which Contain Express Advocacy, Also Are Entitled to Highest First Amendment Protection.*

As the *Buckley* Court explained:

Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than discussion of political policy generally or advocacy of the passage or defeat of legislation.

424 U.S. at 48.

As a result, the Court applied strict scrutiny to the \$1,000 limit on independent expenditures, because it burdened the First Amendment. In so doing, the Supreme Court found the expenditure limit unconstitutional because the compelling interest in preventing *quid pro quo* corruption, which was sufficient to uphold contribution limits, was not present in independent expenditures.

One provision of H.B. 2566 is similarly unconstitutional. Section 101 of the bill sets expenditure limits for House candidates and, if a candidate agrees to comply with them and is otherwise "eligible," provides for significant benefits to the candidate. Also, in subsection (g), these expenditure limits are raised if more than \$25,000 in independent expenditures are made "in favor or another candidate or against such eligible candidate." In *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994), the Eighth Circuit Court of Appeals struck down a similar scheme on the grounds that such a provision chills constitutionally protected independent expenditures and was a content-based discrimination against such speech.

²Interestingly, many advocates of campaign finance reforms which stifle speech support even lower contribution limits — which "necessarily increase the burden of fundraising," *Buckley*, 424 U.S. at 96 — while simultaneously decrying "the money chase."

F. *The Prohibition on Independent Expenditures by Corporations Is Not Applicable to Certain Not-for-Profit Corporations.*

As noted above, the Supreme Court in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), upheld the prohibition contained in § 441b of the FECA on independent expenditures by business corporations. The Court found that, even though such independent expenditures are protected by the First Amendment, the prohibition was supported by the compelling governmental interest in preventing use of corporate funds for political purposes which "are . . . a function of its success in the economic marketplace," not the corporation's "popularity in the political marketplace." *Id.* at 259. In a subsequent case, the Supreme Court framed this interest as a concern that "the corrosive and distorting effect of commercial aggregations of wealth . . . are accumulated with the help of the corporate forum and . . . have little or no correlation to the public support for the corporation's political ideas." *Austin v. Michigan Chamber of Congress*, 494 U.S. 652, 660 (1990).

However, the Court found that this compelling interest was not applicable to not-for-profit corporations which were created to promote political ideas and which do not serve as conduits for business contributions. In the case of these not-for-profit corporations, the funds are raised directly because of their political ideas. As a result, the Court held that the general ban on political contributions by corporations could not be enforced against MCFL-type not-for-profit corporations.

G. *In Order to be Considered to be a Political Committee, the Organization's Major Purpose Must be the Nomination or Election of Candidates.*

As part of the *Buckley* Court's effort to protect issue advocacy by organizations, the Court limited the definition of political committees to only encompass organizations "that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79. As a result, an organization does not have to register and report as a political committee, as required by § 434(e) of the FECA, unless the organization's major purpose is express advocacy.

Despite this clear holding of the Supreme Court, the Federal Election Commission continues to try to regulate, as political committees, not-for-profit corporations and other groups for their issue advocacy and occasional express advocacy activities. These efforts continue to be rebuffed by the courts. See *FEC v. GOPAC*, 1996 WL 99284 (D.D.C. Feb. 29, 1996).

H. *Political Freedom of Association Is Equally Protected with Political Speech.*

As noted by the Court in *Buckley*, 424 U.S. at 15, "the First Amendment protects political association as well as political expression." As a result, citizens have the "freedom

to associate with others for the common advancement of political beliefs and ideas.” *Id.* “Governmental action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.* at 25.

Political action committees (PACs) are associations organized to enhance the political expression of citizens by joining individual contributions with those of others so that they may more effectively participate in political speech. The abolishment of PACs, as proposed in H.R. 2566 and S. 1219, therefore, is clearly unconstitutional and any disparate treatment of PACs, such as through lower contribution limits or by capping the total amount of PAC contributions to candidates, would also be unconstitutional. See *Vote Choice v. DiStefano*, 4 F.3d 26 (1st Cir. 1993).

I. No Prior Restraint on Free Political Speech Can Be Tolerated.

The United States Supreme Court has long held that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1979). This is particularly true with political speech since “timing is of the essence . . . when an event occurs, it is often necessary to have one’s voice heard promptly, if it is to be considered at all.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969). Therefore, a prior restraint, even for “a day or two” may be intolerable when applied “to political speech in which the element of timeliness may be important.” *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 182 (1968).

Both H.R. 2566 and S. 1219 propose to give the Federal Election Commission the power to seek an injunction where there is a “substantial likelihood that a violation . . . is . . . about to occur.” These provisions would allow the FEC to seek injunctions to restrain speech where the speech involves issue advocacy in voter guides and even where the violation is trivial such as where there is no disclaimer on the communication. Unfortunately, injunctions have issued in the past for just such alleged “violations” of state election law. See *Family Foundation v. Brown*, 9 F.3d 1075 (1993); *Virginia Society for Human Life v. Caldwell*, 906 F. Supp. 1071 (W.D.Va. 1995). These injunctions were overturned on appeal, but the damage of lost opportunity to distribute voter guides on the eve of an election was done. This power should not be given here.

III. POSITIVE PROPOSALS FOR REFORM BY ENHANCING SPEECH.

In contrast to the serious constitutional obstacles to efforts to curtail speech, Congress is free to adopt measures that will enhance and encourage speech. As the *Buckley* Court explained, in upholding the provision of the FECA providing public funds for elections:

Although “Congress shall make no law . . . abridging the freedom of speech, or of the press,” [public funding of elec-

tions] is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people. Thus, [the provision] furthers, not abridges, pertinent First Amendment values.

424 U.S. at 92-93.

But public funding of campaigns is only one way for Congress to "facilitate and enlarge public discussion and participation in the electoral process." The best antidote to the "undue influence of special interests" is to encourage citizens to take a more active part, as individuals and in association with others, in the political process. The following measures are designed to do just that.³

1. Section 441b of the FECA Should Be Amended to Reflect the Protections of Issue Advocacy and of the Political Speech of Not-for-Profit Corporations.

As discussed above, § 441b of the FECA makes it unlawful for any corporation "to make a contribution or expenditure in connection with any (federal) election." However, the United States Supreme Court in *MCFL*, 479 U.S. 238 (1986), imposed two significant limitations on this prohibition.

First, the Court interpreted § 441b to be limited to expenditures for "express advocacy," and, second, the Court held that the prohibition on corporate expenditures were not applicable to certain not-for-profit corporations. These limitations should be incorporated by Congress in § 441b by amending it.

After *Buckley*, Congress amended the FECA to incorporate changes in the statute required by the Court. For instance, Congress amended § 434(c) to reflect that disclosure of expenditures by organizations that were not political committees were limited to "independent expenditures" and adopted a definition of "independent expenditure" in § 431(17).

³These proposals are based on my extensive political experience with involvement in all facets of the political process. I have served as the attorney for a major not-for-profit corporation and political action committees (principally for the National Right to Life Committee, Inc. and the National Right to Life Political Action Committee), as a political party official (Chairman of the Vigo County, Indiana, Republican Party), and as a campaign manager (State Vice Chairman for the Rex Early for Governor campaign). Finally, I have supported candidates as a citizen and as a contributor. The recommendations in this section are personal recommendations and do not necessarily reflect the views of any group which I represent.

Similarly, Congress should amend § 441b to provide that it is unlawful for any corporation "to make a contribution or to make an expenditure which expressly advocates the election or defeat of a clearly identified candidate."

In addition, § 441b should be amended to add a new subsection which provides that the prohibition on a corporation making an expenditure which expressly advocates the election or defeat of a clearly identified candidate does not apply to a not-for-profit membership corporation which (1) does not engage in substantial business activities, other than traditional fundraising activities of not-for-profit organizations, that are unrelated to the charitable, educational or political activities of the organization, (2) has no shareholders or other persons affiliated so as to have a claim on its assets or earnings, and (3) was not established by a business corporation or a labor union and does not receive a substantial portion of its contributions from such entities.

These changes would conform with the Court's decision in *MCFL*, see *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994); *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995), and would signal the willingness of Congress to abide by this important issue advocacy protecting decision. Furthermore, incorporating these changes in the statute will make it readily apparent to all that this provision is narrow on its face; where now one has to read the United States Reports to know about this significant limitation.

2. Congress Should Allow Certain Not-for-Profit Corporations to Make Contributions to Federal Candidates.

Since the Court held in *MCFL* that certain not-for-profit corporations do not pose any threat to corrupt the electoral process, because contributions to them are generated by their advocacy of political ideas, and they are thus free to make independent expenditures, there is no justification to prohibiting them from also making contributions to federal candidates.⁴

This change would expand the pool of possible contributors to candidates and, since these organizations often promote important political ideas, rather than narrow economic interests, their addition to the pool of possible contributors would help offset these "special interests."

This change could be made by modifying the new subsection proposed for § 441b in Section A, *supra*, by providing that the prohibition on a corporation making a contribution or an expenditure which expressly advocates the election or defeat of a clearly identified candidate does not apply to the not-for-profit membership corporations described therein.

⁴In fact, this prohibition of contributions by certain not-for-profit corporations may be unconstitutional and is currently being tested before the 6th Circuit Court of Appeals in *Kentucky Right to Life v. King*, No. 95-6581 (6th Cir.)

3. Certain Not-for-Profit Corporations Should Be Allowed to "Bundle" Individual Contributions to Candidates.

Bundling of individual contributions to candidates is currently limited to PACs. Even if certain not-for-profit corporations are not allowed to contribute to candidates, Congress should allow them to solicit from their members individual contributions to candidates that are then "bundled" and given to the candidate. This could be accomplished by specifically allowing this activity in the amendment to § 441b proposed above.

Providing this new method of encouraging individual contributions will enhance political giving by individual citizens, diminishing the relative influence of PACs and "special interests." This "bundling" activity should be reported by amending § 434(c) to so provide.

4. The Definition of Political Committee Should Be Amended to Reflect the Court's Major Purpose Test.

As explained above, the Court in *Buckley* held that an organization cannot be considered a "political committee" unless the organization is "under the control of a candidate or the major purpose of the organization is the nomination or election of a candidate." 424 U.S. at 79. Unfortunately, when Congress amended the FECA after *Buckley*, this limitation was not included.

The effect of Congress's failure to modify the definition of "political committee," found in § 431(4)(a) of the FECA, to meet *Buckley*'s requirements has been to encourage the FEC to run amuck trying to impose on issue advocacy groups the requirements on PACs in the FECA. This has had the effect of chilling the legitimate issue-oriented activities of such groups and has imposed substantial costs on them in their efforts to resist such unconstitutional impositions. Congress should make this change now by amending § 431(4)(a) by adding at the end "and which is under the control of a candidate or the major purpose of which is the nomination or election of a candidate."

5. The Individual Contribution Limit Should Be Increased to \$2,500 and the Aggregate Limit to \$100,000.

The individual contribution limit of \$1,000, found in § 441a(a)(1)(A), and the aggregate contribution limit of \$25,000, found in § 441a(a)(3), has been in effect since 1974. While a \$1,000 contribution represented a large contribution in 1974, it does not today.⁵ Furthermore, allowing individuals to make larger contributions will enhance the ability of individual citizens to influence the political process while helping to offset the influence of

⁵In fact, based on figures from the Consumer Price Index, \$1,000 in 1974 was worth \$2,604.57 in 1994.

"special interests" and PACs. The individual contribution limit should be raised to the \$2,500 and be indexed for inflation. In addition, if there is sentiment to lower the amount of a permitted PAC contribution, it should not be lowered beneath the floor of the individual contribution of \$2,500, adjusted for inflation.⁶

Furthermore, to accommodate the increase in individual contributions to candidates and to political parties, suggested below, the aggregate contribution limit should be increased to \$100,000.

6. The Individual Contribution Limit to Political Parties Should Also Be Raised.

Individual contributions to any national political party are limited to \$15,000 per year by § 441a(a)(2)(B). This limitation has diminished the relative influence of political parties and encouraged them to seek soft money. Increasing the individual contribution limit to \$50,000 would help strengthen parties that can provide an effective counter-weight to "special interests." Furthermore, most agree that political parties serve a beneficial mediating role in the political process that should be enhanced. Both of these benefits would be derived by increasing the contribution limit to political parties.⁷

7. The Amount Political Parties Can Spend in Coordinated Expenditures with Federal Candidates Should also Be Increased.

With the increase in the individual contribution limit to political parties, Congress should increase the coordinated expenditure limits provided in § 441a(d). These limits have also been in existence since 1974 and were not indexed for increases in the consumer price index as were the expenditure limits on presidential campaigns. See § 441a(c). Because of the increase in the cost of federal campaigns, the influence of political parties has diminished. Congress should restore this balance and also index the new limits to inflation.⁸

⁶If individual limits were raised to \$2,500, it would be unconstitutional to limit PAC contributions to \$1,000 as proposed by some. This is so because, as explained above, PACs are associations which are protected against discrimination by the First Amendment. Such unconstitutional discrimination would occur if PACs were more severely limited in their contributions than are persons acting individually.

⁷Efforts to limit soft money contributions to political parties have the opposite effect. If political parties must use hard money for administration, legal and accounting services, and generic, rather than candidate specific, voter registration and get-out-the-vote activities, then their relative influence with candidates is diminished and the influence of "special interests" is increased.

⁸Indeed, Congress should index all expenditure and contribution limits to inflation in
(continued...)

8. The Definition of Contribution Should Be Amended to Clarify that It Does Not Apply to Issue Advocacy.

In a case currently before the United States Supreme Court, the Federal Election Commission is again attempting to regulate and restrict issue advocacy by claiming that issue advocacy becomes a contribution to a candidate, subject to contribution limits, if the expenditure for the issue advocacy is coordinated with a candidate. See *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 59 F.3d 1015 (10th Cir. 1995), cert. granted, No. 95-489 (1996). There is no justification for issue advocacy to lose its protected status just because it has been communicated to a candidate.

This misguided attempt to circumvent the protection of issue advocacy in *Buckley* can be prevented by adding to those items listed in § 431(8)(B), as not being included in the definition of "contribution," any expenditure for a communication which does not expressly advocating the election or defeat of a clearly identified candidate.

9. The Tax Credit for Small Political Contributions Should Be Restored.

The 1974 amendments to the FECA contained a 50% individual tax credit for political contributions up to \$100. This tax credit provided a substantial incentive for small political contributions. This incentive should be restored to encourage small contributions from a greater number of citizens.

10. Limits on Issue Advocacy for Tax Exempt Groups in the Internal Revenue Code Should Be Eliminated.

The Internal Revenue Code imposes limits on issue advocacy for tax exempt organizations. Specifically, the Internal Revenue Code prohibits groups exempt under § 501(c)(3) from "participat(ing) in, or interven(ing) in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Organizations that are exempt under § 501(c)(4) may engage in political activity but such activity must be "insubstantial" and is subject to a tax under § 527.

Unfortunately, the Internal Revenue Service has given this provision a very expansive interpretation which clearly encompasses issue advocacy. For instance, in Revenue Ruling 78-248, the IRS interpreted this provision to include voter guides, even though they only contained issue advocacy and did not contain any "express advocacy." As a result, not-for-profit group have been chilled in the exercise of their constitutional right to issue advocacy.

⁸(...continued)

order to maintain the balance between them struck by Congress in any new law.

Congress should correct this clear violation of First Amendment speech by bringing this provision into compliance with *Buckley*. This provision should be amended to read that this exemption is available to § 501(c)(3) organizations that "do not contribute to any political candidate, political committee, or political party and do not make any expenditures expressly advocating the election or defeat of a clearly identified candidate for political office." Furthermore, Congress should make it clear in the statute that § 501(c)(4) organizations are not subject to a tax except on any contribution to a political candidate, committee, or party and on any independent expenditure expressly advocating the election or defeat of a clearly identified federal candidate.

11. Reasonable Attorneys Fees Should Be Authorized by Congress if any Provision of the FECA of Action of the FEC Violates Constitutionally Protected Rights.

A substantial deterrent to a State violating the guarantees of federal law is the provisions of 42 U.S.C. § 1988 authorizing an award of attorney fees to prevailing private party plaintiffs who are seeking to vindicate constitutional rights. While federal law does not generally allow for an award of attorney fees against federal agencies, it is justified in this case for two reasons.

First, the FECA uniquely involves the attempt by government to regulate vital First Amendment rights that are "indispensable democratic freedoms." Particularly in light of the efforts by some to pass provisions know to be unconstitutional, a provision that allows an award of attorney fees for a successful effort to strike down a portion of the FECA is warranted.⁹

Second, the FEC has a sorry history of repeated attempts to unconstitutionally expand its powers to regulate issue advocacy. A significant deterrent to such intransigence, and a justified effort to compensate the victims of it, would be to award attorney fees to those private parties that prevail in FEC enforcement actions or against new FEC regulations.

IV. CONCLUSION

Congress has a unique opportunity to make significant changes that will improve our electoral process. There are two paths that beckon. One — to limit, stifle, punish and penalize speech — is doomed to failure at the doorstep of the United States Supreme Court. The other — to encourage, promote and enhance speech — will not only pass constitutional muster but will restore the balance that many believe is critically needed. Congress should choose the right path.

⁹In addition, attorney fees could be awarded to the FEC if it prevailed if the claims made by the losing private party plaintiff were frivolous or in bad faith. Cf. 42 U.S.C. § 1988.



THE LEAGUE
OF WOMEN VOTERS®
OF THE UNITED STATES

March 29, 1996

President

Becky Cain
St. Albans, West Virginia

Vice-Presidents

Beverly K. McKinnell
St. Paul, Minnesota

Bobbie E. Hill
Camden, Arkansas

Secretary-Treasurer

Diane B. Sheridan
Taylor Lake Village, Texas

Directors

Pat Brady
Springfield, Virginia

Marilyn F. Brill
Danville, Pennsylvania

Jane S. Garbacz
Wilton, Connecticut

Kris Hudson
Portland, Oregon

Carolyn Jefferson
Sagamore Hills, Ohio

Karren Kerr
Omaha, Nebraska

Debbie Macon
West Bloomfield, Michigan

Terry McCoy
Columbus, Ohio

Eleanor Revelle
Evanston, Illinois

Carole Wagner Vallianos
Manhattan Beach, California

Kathleen Weisenberg
Atherton, California

Executive Director

Judith A. Conover

The Honorable John Warner
Chairman

Senate Committee on Rules and Administration
301 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify at the March 13th campaign finance reform hearing before the Committee on Rules and Administration. I am writing in response to your request for further information on the League of Women Voter's views on negative advertising and the constitutionality of limits on campaign contributions to candidates from political action committees (PACs).

The League of Women Voters has a long history of concern about political advertising that is misleading or gives false information. That remains a concern. Ads should be true. But we are also discovering that ads can be perfectly true and still have a deleterious impact on the democratic process. For those with a deep interest in voter participation and the American political process, such as the League, this type of negative advertising is a concern.

A recently released book entitled Going Negative, by political scientists Stephen Ansolabehere and Shanto Iyengar, provides new and important information on negative advertising. The authors tested the response of potential voters to advertisements that made positive statements about one candidate versus advertisements that made analogous negative statements about the opposition candidate. The result was that "people exposed to the negative versions of the advertisements registered lower intentions to vote, expressed less confidence in the political process, and placed less value on their own participation."

The authors summarized their studies by saying "negative advertisements, which account for approximately half of all campaign messages (emphasis added), are shrinking the electorate, especially the non-partisan electorate. As the independents in the middle stop voting, the partisans at the extremes come to dominate electoral politics. It is the voice of this increasingly small and increasingly polarized voting public that representatives hear...(E)xposure to negative advertising produces a substantial decrease in voter turnout."



1730 M STREET, N.W., WASHINGTON, D.C. 20036-1505
202/429-1965 FAX: 202/429-0854

Printed on recycled paper

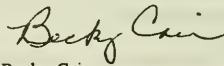
When they are used to suppress voter turnout, when their effect is to undermine citizen confidence in government, and when they polarize and make governing more difficult, then negative ads are playing too big a part in our electoral process. We at the League believe that citizens need to be concerned about ads that are untruthful or misleading, and we also need to be concerned about negative ads becoming a larger and larger part of our political process.

With regard to the constitutionality of limits on political action committee contributions, the League of Women Voters has testified that we support an aggregate limit on the total PAC contributions a candidate may receive. We believe that this is a reasonable limitation, well within Congress's authority to contain corruptive influences. According to the 1976 Supreme Court decision in Buckley v. Valeo, Congress does have the authority to enact legislation to control corruption or the appearance of corruption in the political process. While the Supreme Court has not had an opportunity to directly consider an aggregate limit on PAC contributions, such a limit is consistent with the contribution limits for PACs that was approved in Buckley. Indeed, an aggregate limit is necessary to make the contribution limits effective, by preventing PACs from proliferating (as a way around the contribution limit) and by limiting the dependence of candidates on PAC contributions.

As we noted in our testimony, most experts agree that a total ban on PAC contributions would be unconstitutional. In addition, we believe that a total PAC ban would force special interest money to reconstitute itself as large individual contributions or independent expenditures. Therefore, we support the aggregate limit on PAC expenditures as a means of limiting the corruptive influence of PACs while keeping within the Buckley v. Valeo admonitions concerning free speech and associational rights of citizens. An aggregate limit on PAC contributions would not be a total ban, and such a limit would not prevent any one PAC from making a contribution. In addition, under the aggregate limit approach, PACs could make independent expenditures consistent with the First Amendment.

I hope this information is of use to you. We are happy to have the opportunity to share the League's perspective with the Committee on Rules and Administration. We would be pleased if this letter were included in the committee's record.

Sincerely yours,



Becky Cain
President



CENTER FOR A NEW DEMOCRACY

410 Seventh Street SE * Washington DC 20003 * 202-543-0773 * FAX 202-543-2591

96 MAR 18 AM 6:13

March 15, 1996

Honorable John Warner, Chair
Senate Rules and Administration Committee
Senate Russell Office Building
United States Senate
Washington, D.C. 20510

Dear Chairman Warner:

I am writing to express my concern and to request a correction on the record regarding statements made in the Committee's most recent hearings in reference to the Center for a New Democracy and its "position" on campaign finance reform legislation that is pending before your committee. I understand that Senator Mitch McConnell stated on the record that the Center for a New Democracy "opposes" S.B. 1219 which is sponsored by Senators McCain and Feingold. This statement is in error.

For the record, the Center for a New Democracy is a nonprofit, nonpartisan organization that provides technical assistance and support to individuals and citizens' groups that are exploring campaign finance reform options in their states. We conduct a range of educational and research projects on democracy issues, including campaign finance reform. The Center for a New Democracy neither supports nor opposes any specific legislation. And, while we are available for, and indeed have provided, expert testimony regarding the prospective impact of legislative proposals on the campaign finance system at the state and federal levels, we have not been requested to do so in regard to the legislation that is pending currently before your committee.

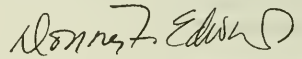
In our view, any campaign finance reform legislation must have as its principal goals: restoring confidence in government by eliminating the appearance of corruption, expanding the participation of ordinary voters and small donors, and opening the elections process to real competition. However, we have not had the opportunity to express to the Committee whether the proposals before you meet these threshold principals. I have not, and nor have my staff, ever spoken with Senator McConnell or his staff regarding the potential impact of the McCain-Feingold bill or any other legislation that you are considering. And, while I was in contact by telephone with the Committee staff sometime ago regarding potentially offering testimony to the Committee as might be helpful, I have never been requested to do so.

I understand the desire of members of the Committee to make known publicly the names of organizations and/or individuals who support or oppose pending legislation, however it is imperative that such statements made on the record are true. Given that the Center for a New Democracy does not take positions in support of or in opposition to any legislation, we

are surprised at Senator McConnell's reference to our views on the McCain-Feingold bill. It was inappropriate to refer to the Center for a New Democracy's purported opposition to the legislation before you. I would, therefore, appreciate that the record be amended to correct the Senator's error.

Of course, should the Committee desire the views of the Center for a New Democracy on the potential impact of any legislative proposal within our area of expertise we would be honored to provide you with whatever information might be helpful in your deliberations.

Best regards,

A handwritten signature in dark ink, appearing to read "Donna F. Edwards", followed by a large, stylized capital "D".

Donna F. Edwards
Executive Director

cc: Senator Mitch McConnell
Senator Wendell H. Ford

96 MAR 21 AM 6:21

415 Madingley Road
Linthicum, MD 21090
March 19, 1996

The Honorable John Warner, Chairman
United States Senate
Committee on Rules and Administration
Washington, D.C. 20510

Dear Senator Warner:

On March 13 of this year, I testified before your committee on the matter of campaign finance reform. My statement dealt with my experience of being compelled to participate in the financing of political campaign activities through the payment of forced dues to a labor union. During the questioning that followed my statement, Senator Ford asserted that I had charged the Communications Workers of America with an unfair labor practice over the amount of 84¢. I stated that I did not recall filing such a charge. Senator Ford, however, insisted that I had. After reviewing my records, I believe that I have discovered the source of Senator Ford's allegation.

In NLRB case 5-CB-6814, the NLRB ruled against me and erroneously claimed that the amount at stake was 84¢. The appeal that was filed on my behalf clearly indicates that the amount at stake was \$366,500.00 not 84¢.

I have enclosed copies of the relevant documents. I respectfully request that the committee's record be supplemented with this additional information in order to present a more accurate account of my experiences.

Sincerely,

Charles R. Serio
Charles R. Serio

FORM EXEMPT UNDER E.O. 12812

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

DO NOT WRITE IN THIS SPACE

Case

Date Filed

5-CB-6814

3/18/91

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, seen local, and each individual named item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

Name Communications Workers of America	b. Union Representative to contact James Conness
Telephone No. (202) 728-2456	3. Address (street, city, state and ZIP code) 1925 K Street, N.W., Washington, D.C. 20006

4. The above-named organization(s) or its agent(s) has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections): 8(b)(1)(A); 8(b)(2); of the National Labor Relations Act.
and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

5. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practice(s))

The respondent labor organization is causing the employer of the named charging party and similarly situated discriminatees to deduct from "profit sharing" receipts, under purported authorization of § 8(a)(3) of the Act, amounts which:

- A. are not "dues";
- B. are not "regular dues";
- C. are not "uniformly required";
- D. exceed those authorized by payroll deduction authorizations; and which
- E. exceed those authorized by Communications Workers v. Beck, 487 U.S. 735 (1988) & GC 88-14 (November 15, 1988).

Through the actions alleged, the respondent labor organization is: violating its duty of fair representation and fair dealing in violation of § 8(b)(1)(A); causing the employer to discriminate against employees in violation of § 8(a)(3), thereby violating § 8(b)(2);

Name of Employer Chesapeake & Potomac Telephone Co. of Maryland & various employers	4. Telephone No. (202) 392-1070
Location of plant involved (street, city, state and ZIP code) 1710 H Street, N.W., Washington, D.C. 20006	6. Employer representative to contact Bernard Dworski
Type of establishment (factory, mine, wholesaler, etc.) Telephone Services	8. Identify principal product or service —
9. Number of workers employed 11,000 (C&P) 500,000 other (employers)	
7. Full name of party filing charge Charles R. Serio, individually and on behalf of other similarly situated nonmember-discriminatees.	
11. Address of party filing charge (street, city, state and ZIP code) 415 Madingley Road, Linthicum, MD 21090	12. Telephone No. (W) (301) 393-2008

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

✓ Hugh L. Reilly (Signature of representative of person making charge) (Hugh L. Reilly) Attorney
Address 8001 Braddock Road, Suite 600 703/321-8510 (date or office, if any)
Springfield, Virginia 22160 (Telephone No.) 3-14-91 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 5

109 Market Place - 4th Floor

Baltimore, MD 21202-4026

(301) 962-2822

August 30, 1991

ATTN: MR. HUGH L. REILLY
NATIONAL RIGHT TO WORK LEGAL
DEFENSE FOUNDATION, INC.
8001 BRADDOCK ROAD
SPRINGFIELD, VA 22160

Re: Communications Workers of America,
AFL-CIO (Chesapeake & Potomac
Telephone Co. of Maryland)
Case 5-CB-6814

Dear Mr. Reilly:

The above-captioned cases, charging violations under Section 8(b) of the National Labor Relations Act, as amended, have been carefully considered.

As a result of the investigation, it does not appear that the Union violated Section 8(b)(1)(A) and (2) of the Act by causing the Employer to deduct dues of non-member employees from a negotiated profit-sharing plan. The Employer and Union are parties to a collective-bargaining agreement which contains an agency shop provision. The Employer utilizes a checkoff authorization form for payroll deductions which provides for the deduction of full dues, but not the deduction of the reduced amounts owed by non-members under Communications Workers v. Beck, 487 U.S. 735 (1988). The parties agreed in 1989 that unit employees would receive, as part of their wage package, sums from the profit-sharing plan. The Union currently computes dues as a fraction (1.3 percent) of wages, and has treated proceeds from the profit-sharing plan as wages for the purpose of calculating dues.

On March 8, 1991, the Employer issued the Charging Party a check under the profit-sharing plan for a gross amount of \$546 from which it deducted 1.3 percent, or \$7.33, as dues. You contend that since the Union earlier furnished an advance rebate of nonrepresentational costs, it could not make further deductions for dues during the yearly period encompassed by the rebate; and that, further, even if this procedure is lawful, the Union should not have caused the Employer to deduct the entire \$7.33, because the Union has rebated to Beck objectors 11.48 percent of dues, a figure that constitutes nonrepresentational expenses as defined in Beck. Thus, the amount you contend should not have been deducted is \$0.84.

The investigation reveals that there is no evidence that the Union could anticipate with any degree of reasonable certainty the impact of the profit-sharing arrangement on the unit employees, in general, and on the objectors in

Re: Case 5-CR-6814

- 2 -

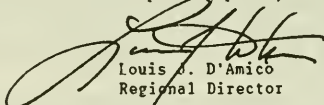
August 30, 1991

particular. In this connection, it is noted that Beck does not require absolute precision in the calculation of the charge to non-members. Moreover, the levy on the proceeds of the profit-sharing plan was the equivalent of a dues increase levied on all subject to the union-security clause, members and objectors alike. The Union was therefore privileged to assess dues on the profit-sharing moneys, even though it had previously given objectors an advance rebate. It was determined that complaint is not warranted to recover the nonrepresentational portion of the additional sum levied, i.e., \$0.84. Initially, it is far from clear that this amount exceeds the loss to the Union occasioned by its advance rebate system. But even assuming that you actually paid somewhat more to the Union than the dues deduction arrangement technically required, the sum involved is de minimis and, thus, insufficient to constitute a violation of the Act. Accordingly, further proceedings are unwarranted, and I am refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing an appeal with the General Counsel, addressed to the Office of Appeals, National Labor Relations Board, 1717 Pennsylvania Avenue, NW, Room 1154, Washington, D.C., 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on September 13, 1991. Upon good cause shown however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington and a copy of any such request should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with me within the time stated above.

Very truly yours,


Louis A. D'Amico
Regional Director

Enclosures

CERTIFIED MAIL NO. P 635 460 333
RETURN RECEIPT REQUESTED

cc: See Page Three

Re: Case 5-CR-6814

- 3 -

August 30, 1991

cc: GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
OFFICE OF APPEALS, ROOM 1154
1717 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20570

MR. CHARLES R. SERIO
415 MADINGLEY ROAD
LINTHICUM, MD 21090

ATTN: MR. NORMAN M. GLEICHMAN
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO
1925 K STREET, NW, SUITE 206
WASHINGTON, DC 20006

ATTN: MR. JAMES COPPESS
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO
1925 K STREET, NW, SUITE 411
WASHINGTON, DC 20006

ATTN: MR. BERNARD DWORSKI
CHESAPEAKE & POTOMAC TELEPHONE CO.
OF MARYLAND
1710 H STREET, NW
WASHINGTON, DC 20006



NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160 • (703) 321-8510

September 13, 1991

Mary M. Shanklin, Director
Office of Appeals
Office of the General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D. C. 20570

Re: Communications Workers
No. 5-CB-6814

Dear Ms. Shanklin:

This constitutes the appeal of Charles R. Serio from the refusal of the Director of Region 5 to issue a complaint in the above-captioned case. The Region's decision is set forth in Director D'Amico's letter to me of August 30, 1991 (August 30, Letter). This appeal is submitted within the time allowed by that letter.

The charges concern involuntary exactions of a percentage from profit sharing payments owed to employees under a collective bargaining agreement. Mr. Serio's employer, the Chesapeake and Potomac Telephone Company of Maryland, made the exactions and remitted them to the Communications Workers of America (CWA) under the purported authority of § 8(a)(3) of the Act. Mr. Serio's charges contend that such involuntary exactions violate principles established in Communications Workers v. Beck, 487 U.S. 735 (1988), and, indeed, the definition of "dues" authorized by the CWA convention. His basic position is stated in my letter to Ron Broun, Region 5 Board Agent, dated May 14, 1991 (May 14 Letter), which we incorporate herein in support of this appeal.

Our purpose here is not to reiterate the position stated in the May 14 Letter. We would point out, however, that, for the most part, we anticipated and rebutted the reasons for dismissal stated in the Region's August 30 Letter. Instead, we will address what we believe to be the entirely spurious reasons for dismissal relied upon by the Region; for those reasons have no basis in Beck, and

Mary M. Shanklin
 September 13, 1991
 Page 2

ignore limitations upon governance found in CWA's constitution and in the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).¹

First, the Region says: "The Union currently computes dues as a fraction (1.3 percent) of wages, and has treated proceeds from the profit-sharing plan as wages for the purpose of calculating dues." We respectfully suggest that stating what CWA does is not to state a justification for it; instead, it is to state CWA's violation of the NLRA, as alleged. As our May 14, 1991 Letter demonstrates, the CWA convention did not authorize a dues increase, even for members, of "1.3 percent of wages," but an increase of "1/4 hour per month." The convention authorization makes clear that the increase was not authorized for a part of total compensation, but only a part of hourly pay. The limitation could not be clearer. By ignoring that limitation on "dues" authority enacted by members, CWA violates § 101(a)(3)(B) of LMRDA²; after all, there is not the slightest indication that the CWA convention would have passed a resolution authorizing 1/4 of a percent increase in "dues" to cover total compensation, rather than hourly pay. And, because the "dues" language in § 8(a)(3) of the NLRA³ sets the payment ceiling for nonmembers, CWA has no more basis for charging nonmembers unauthorized amounts under Beck than it does members, under LMRDA.

Second, the Region performs an arithmetic operation to conclude that all that is at stake here is \$7.33, representing 1.3% of the \$546.00 profit sharing payment due Mr. Serio.⁴ It then makes several claims concerning the dollar amount, as purported reasons for dismissal on de minimus grounds that reflect a profound misreading of Mr. Serio's charges, of Beck, and of Chicago Teachers v. Hudson⁵, applicable here through General Counsel Memorandum GC 88-14 (November 15, 1988).

The Region misreads Mr. Serio's charges, because they are not only individual charges, but were filed "individually and on behalf

¹ 29 U.S.C. § 401.

² 29 U.S. C. § 411(a)(3)(B).

³ 29 U.S.C § 158(a)(3).

⁴ Our calculator indicates that, given these figures, the amount deducted should have been \$7.09, rather than \$7.33, but for purposes of this discussion, we will use the Region's figures.

⁵ Chicago Teachers v. Hudson, 475 U.S. 292 (1986).

Mary M. Shanklin
 September 13, 1991
 Page 3

of other similarly situated nonmember-discriminatees."⁶ And the charges allege that, "the respondent labor organization is causing the employer of the named charging party and similarly situated discriminatees" to violate the NLRA in the ways described.⁷ The record would establish that CWA is the § 9(a) representative for approximately 50,000 nonmember-discriminatees under the NLRA, nationwide. Thus, even for the year in question, the amount at stake is not \$7.33, but \$366,500.00.⁸ And, if a proper complaint is not brought, the unlawful practice will perpetuate itself, year after year, making the amount at stake in the multimillions of dollars.

The Region's approach also reflects a misreading of Beck. Beck nowhere adopts, or even permits, a de minimus approach to violations of the NLRA.⁹ To the contrary, Beck can only be read as establishing the proposition that it is a per se violation of the NLRA for § 9(a) representatives to collect or exact amounts in excess of a collective bargaining charge from objecting nonmembers. Granted, earlier cases, under the Railway Labor Act, did indicate, as the Region suggests, that "absolute precision" in the calculation is not required. However, if such recognition of possible calculation difficulties survives the per se prohibition of Beck (a doubtful proposition), that cannot mean that no precision is

⁶ See block 10 of Mr. Serio's charges in the instant case, dated March 14, 1991.

⁷ Id. at § 2.

⁸ Even if our primary arguments were incorrect, as the Region suggests on p. 1. of the August 30 Letter, and a lesser included position were taken, the Region is wrong in determining the dollar impact of the correct result. As we understand it, the Region concludes, after rejecting our primary arguments, that Mr. Serio's lesser included position might be that the deduction should be reduced by 11%, the percentage of "dues" CWA admitted in fiscal year end 1991 was expended for nonbargaining activities. Even if that were so, the impact is not \$.84, as the Region supposes, but \$.84 x 50,000, or \$42,000.00 in one year.

⁹ The Region's has a skewed vision of de minimis violations, in any event. Why should a neutral administrative agency's application of such a principle permit CWA to keep even \$.84 and require Mr. Serio to loose it. Why does not that same principle require CWA to yield the amount, and Mr. Serio to obtain it. Such imponderables render the de minimus principle useless in determining Beck rights; we presume that is why Beck itself establishes per se rules.

Mary M. Shanklin
 September 13, 1991
 Page 4

required. At the most it can mean that, once correct definitions of chargeable amounts are established, the approved methods of allocation between categories can be employed, even if "absolute precision" does not result. It cannot mean that, erroneous definitions, such as here the grafting of a profit sharing amount onto hourly compensation, can be the departure point for the calculation. Starting off on the wrong road will only compound subsequent imprecision. In any event, an accounting "error" leading to incorrect amounts in the millions, in the thousands, or even of \$.84 is not simply incompatible with "absolute precision" but it is incompatible with any precision at all.

And the Region's approach reflects a misreading of Hudson, and, therefore GC 88-14.¹⁰ Hudson, at n. 10, indicates that "the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year." As Mr. Serio pointed out to the Region, CWA purports to do precisely that, in its Policy On Agency Fee Objections. Hudson and CWA's use of last year's figures through its Policy, Mr. Serio argued to the Region, means that there is no basis in Beck for exactions beyond those derived from hourly compensation. For, by issuing checks under its Policy, as it has, CWA admits that nonmembers' representation fees even measured against hourly compensation exacts excessive amounts! Thus, exactions against the profit sharing distribution violate Hudson. Through profit sharing exactions CWA is attempting to supplement income derived from nonmembers by amounts which are unrelated to bargaining costs under Beck established by last year's costs under Hudson. This is significant because Beck means that excessive exactions are not to occur in the first place, and that a "charge and rebate" system is not allowed. (GC 88-14 at n. 10.)

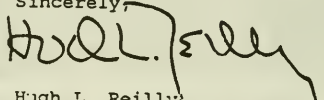
In conclusion, Mr. Serio submits that the Region misreads his charges, Beck, and Hudson in dismissing this case. Under those precedents CWA cannot deduct, or cause the employer to deduct, fees in excess of those necessary to defray bargaining costs. And,

¹⁰ GC 88-14, at n. 4, adopts Hudson in its analysis of employees' rights under the NLRA.

Mary M. Shanklin
September 13, 1991
Page 5

certainly, there is no authority for CWA to make exactions from profit sharing distributions, which are not hourly pay. For these reasons, the case should be remanded for issuance of complaint on the allegations of the charges.

Sincerely,


Hugh L. Reilly
Counsel for Charles R. Serio

HLR:hr

cc. Charles R. Serio



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

November 21, 1991

Re: CWA, AFL-CIO (C & P
Telephone Co. of Maryland)
Case No. 5-CB-6814

Hugh L. Reilly, Esq.
National Right to Work
Legal Defense Foundation, Inc.
8001 Braddock Road
Springfield, Virginia 22160

Dear Mr. Reilly:

Your appeal in the above-captioned case has been carefully considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of August 30, 1991.

Sincerely yours,

Jerry M. Hunter
General Counsel

By:

Mary M. Shanklin
Mary M. Shanklin, Director
Office of Appeals

cc: Director, Region 5
Mr. Charles R. Serio, 415 Madingley Road, Linthicum,
Maryland 21090
Norman M. Gleichman, CWA, AFL-CIO, 1925 K Street, N.W.,
Suite 206, Washington, D.C. 20006
James Coppess, Esq., CWA, AFL-CIO, 1925 K Street, N.W.,
Suite 411, Washington, D.C. 20006
Bernard Dworski, C & P Telephone Co. of MD, 1710 H Street,
N.W., Washington, D.C. 20006

LEGISLATIVE AFFAIRS

UNITED STATES
POSTAL SERVICE

April 24, 1996

Honorable Dianne Feinstein
United States Senate
Washington, DC 20510-0504

Dear Senator Feinstein:

This is in response to your request for postage rate information in connection with campaign reform legislation.

Attached are charts listing current third-class postage rates as well as new rates that become effective on July 1, when classification reform becomes effective. Classification reform includes changes in rates and preparation rules. It also modernizes the name of our service categories, with third-class mail becoming Standard Mail (A). Both existing third-class mail and the new Standard Mail (A) contain nonprofit subdivisions.

Mailers may select from a wide range of bulk rates. These are based on factors such as: weight and level of preparation/presorting of the mailpieces; types of packages, sacks, or other containers used; and the point of entry. Mail entered closer to the delivery point is eligible for more favorable rates than mail entered at more distant locations.

The current rate range for a letter-size item, entered at the regular third-class rate, is from \$0.226/piece to \$0.117/piece. At the special (nonprofit) bulk rate, this range is from \$0.124/piece to \$0.060/piece.

Effective July 1, the Regular Standard (A) rate for the same item ranges from \$0.256/piece to \$0.110/piece. There will be no changes at that time to the nonprofit rates.

Enclosed is additional information regarding third-class/Standard (A) mail. In addition, we are providing the Rules and Administration Committee with responses to the questions you raised at the recent hearing on this issue.

I would be pleased to answer to any specific questions you may have regarding these rates, or to meet with you or your staff to clarify any issues of concern. If I can be of assistance in other postal matters, please let me know.

Best regards,

Jon Leonard
Legislative Affairs Representative

Enclosures

REQUIREMENTS FOR THIRD-CLASS/STANDARD (A) MAIL

Mailers claiming regular or nonprofit third-class/Standard (A) rates must enter at least 200 addressed mailpieces or 50 pounds of material that is properly prepared for the rates claimed. To be mailable at the single piece third-class or bulk third-class rates, a mailpiece must weigh less than 16 ounces. All mailpieces (except keys and identification devices mailed under the applicable standards) that are 1/4 inch thick or less must be rectangular, at least 3 1/2 inches high, at least 5 inches long, and at least 0.007 inch thick. There is no maximum size for single-piece rate or basic and 3/5 presort rate bulk third-class mail. Material mailed at the third-class carrier route rate must not exceed 11 3/4 inches in width, 14 inches in length, or 3/4 inch in thickness.

Printed matter and merchandise weighing less than 16 ounces mailed in bulk is generally eligible for third-class rates. Certain mailpieces may not be eligible for third-class rates (e.g., heavier pieces and handwritten matter) and may be required to be mailed at First- or fourth-class rates.

ELIGIBILITY FOR SPECIAL/NONPROFIT BULK RATES

Current eligibility for the special (nonprofit) bulk third-class/Standard (A) rates is established by statute. The statutes authorize only qualified nonprofit religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans and fraternal organizations, as well as qualified political committees and state or local voting registration officials to mail at the special bulk third-class rates. There are also certain content and other restrictions on the mailings that may be sent by these organizations at the special rates.

The Revenue Forgone Reform Act of 1993 provides for annual postage adjustments for special (nonprofit) bulk third-class mail, generally in October of 1996, 1997, and 1998. In addition, the Postal Service has filed a case with the Postal Rate Commission to reform special bulk third-class mail. If that request is approved, there may be additional adjustments in the rates for Nonprofit Standard Mail (A) mail.

THIRD-CLASS MAIL

Rate	Entry Discount ¹	Nonsautomation Rates					Automation Rates				
		Basic	3/5	Carrier Route	Walk-Sequence		Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3/5-Digit ² Barcoded	
					125-PC	1 Saturation				3-Digit Barcoded	5-Digit Barcoded
Regular Bulk Third-Class Letter-Size Minimum Per Piece Rates for Pieces Weighing 0.2067 lb. (3.3071 ozs.) or Less	None BMC (0.014) SCF (0.020) Delivery Unit (0.025)	\$0.226 0.212 0.206 —	\$0.168 0.174 0.168 —	\$0.150 0.136 0.130 0.125	— — — —	\$0.142 0.126 0.122 0.117	\$0.216 0.202 0.196 —	\$0.183 0.169 0.163 —	\$0.204 0.190 0.184 —	\$0.175 0.161 0.155 —	\$0.166 0.152 0.146 —
Regular Bulk Third-Class Nonletter-Size Minimum Per Piece Rates for Pieces Weighing 0.2067 lb. (3.3071 ozs.) or Less	None BMC (0.014) SCF (0.020) Delivery Unit (0.025)	\$0.266 0.252 0.246 —	\$0.214 0.200 0.194 —	\$0.162 0.148 0.142 0.137	\$0.157 0.143 0.137 0.132	\$0.145 0.131 0.125 0.120	— — — —	— — — —	\$0.237 0.223 0.217 —	\$0.195 0.181 0.175 —	— — — —
Regular Bulk Third-Class Piece/Pound Rates for Pieces Weighing More Than 0.2067 lb. (3.3071 ozs.)	Per Piece Rates (for all entry categories) Per Pound Rates (by entry discount)	\$0.124 PLUS	\$0.072 PLUS	\$0.020 PLUS	\$0.015 PLUS	\$0.003 PLUS	— —	— —	\$0.095 PLUS	\$0.053 PLUS	— —
	None BMC (0.068) SCF (0.092) Delivery Unit (0.119)	\$0.687 0.621 0.595 —	\$0.687 0.621 0.595 —	\$0.687 0.621 0.595 0.568	\$0.687 0.621 0.595 0.568	\$0.687 0.621 0.595 0.568	— — — —	— — — —	\$0.687 0.621 0.595 —	\$0.687 0.621 0.595 —	— — — —
NONPROFIT	Special Bulk Third-Class Letter-Size Minimum Per Piece Rates for Pieces Weighing 8.2148 lb. (3.4363 ozs.) or Less	None BMC (0.012) SCF (0.018) Delivery Unit (0.023)	\$0.111 0.099 0.093 —	\$0.086 0.074 0.068 0.063	— — — —	\$0.083 0.071 0.065 0.060	\$0.117 0.105 0.099 —	\$0.107 0.095 0.089 —	\$0.106 0.094 0.088 —	\$0.101 0.089 0.083 —	\$0.093 0.081 0.075 —
	Special Bulk Third-Class Nonletter-Size Minimum Per Piece Rates for Pieces Weighing 8.2148 lb. (3.4363 ozs.) or Less	None BMC (0.012) SCF (0.018) Delivery Unit (0.023)	\$0.175 0.163 0.157 —	\$0.161 0.146 0.143 —	\$0.128 0.116 0.110 0.105	\$0.128 0.114 0.108 0.103	— — — —	— — — —	\$0.149 0.137 0.131 —	\$0.143 0.131 0.125 —	— — — —
	Special Bulk Third-Class Piece/Pound Rates for Pieces Weighing More Than 8.2148 lb. (3.4363 ozs.)	Per Piece Rates (for all entry categories) Per Pound Rates (by entry discount)	\$0.074 PLUS	\$0.080 PLUS	\$0.027 PLUS	\$0.025 PLUS	\$0.020 PLUS	— —	\$0.048 PLUS	\$0.042 PLUS	— —
	None BMC (0.080) SCF (0.084) Delivery Unit (0.108)	\$0.470 0.410 0.398 —	\$0.470 0.410 0.398 —	\$0.470 0.410 0.398 0.362	\$0.470 0.410 0.398 0.362	\$0.470 0.410 0.398 0.362	— — — —	— — — —	\$0.470 0.410 0.398 —	\$0.470 0.410 0.398 —	— — — —

¹ Value of entry discount in parentheses included in rates shown ² 3-digit and 5-digit for letters; 3/5 for nonletters

STANDARD MAIL (A)

	Entry Discount ¹	REGULAR Letter- and Nonletter-Size Pieces Weighing 0.2068 lb. (3.3087 ozs.) or Less					ENHANCED CARRIER ROUTE Letter- and Nonletter-Size Pieces Weighing 0.2066 lb. (3.3062 ozs.) or Less				
		Nonautomation		Automation ^{2, 4}			Automation ²		High Density	Saturation	
		Basic	3/5	Basic	3-Digit	5-Digit	Basic	Basic			
Letter-Size Minimum Per Piece	None DBMC (0.013) DSCF (0.018) DDU (0.023)	\$0.256 0.243 0.238 —	\$0.209 0.196 0.191 —	\$0.183 0.170 0.165 —	\$0.175 0.162 0.157 —	\$0.155 0.142 0.137 —	\$0.146 0.133 0.128 0.123	\$0.150 0.137 0.132 0.127	\$0.142 0.129 0.124 0.119	\$0.133 0.120 0.115 0.110	
Nonletter-Size Minimum Per Piece	None DBMC (0.013) DSCF (0.018) DDU (0.023)	\$0.306 0.293 0.288 —	\$0.225 0.212 0.207 —	\$0.277 0.264 0.259 —	\$0.189 0.178 0.171 —	— — — —	— — — —	\$0.155 0.142 0.137 0.132	\$0.147 0.134 0.129 0.124	\$0.137 0.124 0.119 0.114	
Piece/Pound ³	Per Piece Rates (for all entries) Per Pound Rates (by entry discount) None DBMC (0.064) DSCF (0.085) DDU (0.111)	Piece/Pound Pieces Weighing More Than 0.2068 lb. (3.3087 ozs.)					Piece/Pound Pieces Weighing More Than 0.2066 lb. (3.3062 ozs.)				
				3/5							
		\$0.166	\$0.085	\$0.137	\$0.049		—	\$0.018	\$0.010	\$0.000	
		PLUS	PLUS	PLUS	PLUS		—	PLUS	PLUS	PLUS	
		\$0.677 0.613 0.592 —	\$0.677 0.613 0.592 —	\$0.677 0.613 0.592 —	\$0.677 0.613 0.592 —	— — — —	\$0.663 0.599 0.578 0.552	\$0.663 0.599 0.578 0.552	\$0.663 0.599 0.578 0.552		
NONPROFIT											
	Entry Discount ¹	Nonautomation Letter- and Nonletter-Size Pieces Weighing 0.2149 lb. (3.4383 ozs.) or Less					Automation ⁴ Letter- and Nonletter-Size Pieces Weighing 0.2149 lb. (3.4383 ozs.) or Less				
		Basic	3/5	Carrier Route	Walk Sequence		Basic ⁴ ZIP+4	3/5 ⁴ ZIP+4	Basic ⁴ Barcoded	3-Digit ² Barcoded	5-Digit ⁴ Barcoded
					125-PC	Saturation					
Letter-Size Minimum Per Piece	None DBMC (0.012) DSCF (0.018) DDU (0.023)	\$0.124 0.112 0.106 —	\$0.111 0.099 0.093 —	\$0.068 0.074 0.068 0.063	— — — —	\$0.063 0.071 0.065 0.060	\$0.117 0.106 0.099 —	\$0.107 0.095 0.089 —	\$0.108 0.094 0.089 —	\$0.101 0.089 0.083 —	\$0.093 0.081 0.075 —
Nonletter-Size Minimum Per Piece	None DBMC (0.012) DSCF (0.016) DDU (0.023)	\$0.175 0.163 0.157 —	\$0.161 0.149 0.143 —	\$0.128 0.116 0.110 0.102	\$0.126 0.114 0.106 0.103	\$0.121 0.109 0.103 0.098	— — — —	— — — —	\$0.149 0.137 0.131 —	\$0.143 0.131 0.125 —	—
Piece/Pound ³	Per Piece Rates (for all entries) Per Pound Rates (by entry discount) None DBMC (0.060) DSCF (0.084) DDU (0.106)	Piece/Pound Pieces Weighing More Than 0.2149 lb. (3.4383 ozs.)					Piece/Pound Pieces Weighing More Than 0.2149 lb. (3.4383 ozs.)				
		\$0.074	\$0.060	\$0.027	\$0.025	\$0.020	—	—	\$0.048	\$0.042	
		PLUS	PLUS	PLUS	PLUS	PLUS	—	—	PLUS	PLUS	
		\$0.470 0.410 0.386 —	\$0.470 0.410 0.386 —	\$0.470 0.410 0.386 0.362	\$0.470 0.410 0.386 0.362	\$0.470 0.410 0.386 0.362	— — — —	— — — —	\$0.470 0.410 0.386 —	\$0.470 0.410 0.386 —	

¹ Value of entry discount in parentheses included in rates shown. ² Letter-size pieces over 3 ozs. subject to additional standard (DBMC810). ³ Each piece is subject to both a piece and a pound rate. ⁴ Automation rate for nonletters applies only to automated flats.

⁵ Weight limit of 2.5 ozs.

Costs of Campaign Finance Reform Per Election Year Calculated on a State by State Basis
Calculated at Two Pieces of Mail per Voter from Twelve Candidates Per Election

State	Number of Potential Voters in State /1	Number of Elected Officials of /2	Volume Each Election /3	Revenue Forgone for Each Election /4	Mail Cost to Candidates for Each Election /5
Alabama	3,138,000	4,315	75,312,000	3,456,821	5,422,464
Alaska	429,000	1,865	10,296,000	472,586	741,312
Arizona	2,923,000	3,191	70,152,000	3,219,977	5,050,944
Arkansas	1,817,000	8,331	43,608,000	2,001,607	3,139,776
California	23,225,000	19,279	557,400,000	25,584,660	40,132,800
Colorado	2,713,000	8,035	65,112,000	2,988,641	4,688,064
Connecticut	2,486,000	9,929	59,664,000	2,738,578	4,295,808
Delaware	534,000	1,227	12,816,000	588,254	922,752
District of Columbia	452,000	325	10,848,000	497,923	781,056
Florida	10,856,000	5,368	260,544,000	11,958,970	18,759,168
Georgia	5,159,000	6,556	123,816,000	5,683,154	8,914,752
Hawaii	900,000	160	21,600,000	991,440	1,555,200
Idaho	603,000	4,678	19,272,000	884,585	1,387,584
Illinois	8,712,000	38,936	209,088,000	9,597,139	15,054,336
Indiana	4,298,000	11,355	103,152,000	4,734,677	7,426,944
Iowa	2,112,000	17,043	50,688,000	2,326,579	3,649,536
Kansas	1,889,000	16,410	45,336,000	2,080,922	3,264,192
Kentucky	2,857,000	7,481	68,568,000	3,147,271	4,936,896
Louisiana	3,100,000	4,985	74,400,000	3,414,960	5,356,800
Maine	931,000	7,147	22,344,000	1,025,590	1,608,768
Maryland	3,750,000	2,032	90,000,000	4,131,000	6,480,000
Massachusetts	4,564,000	13,888	109,536,000	5,027,702	7,886,592
Michigan	6,983,000	19,292	167,592,000	7,692,473	12,066,624
Minnesota	3,362,000	19,013	80,688,000	3,703,579	5,809,536
Mississippi	1,905,000	4,950	45,720,000	2,098,548	3,291,840
Missouri	3,902,000	17,115	93,648,000	4,298,443	6,742,656
Montana	623,000	5,646	14,952,000	686,297	1,076,544
Nebraska	1,192,000	15,064	28,608,000	1,313,107	2,059,776
Nevada	1,088,000	1,174	26,112,000	1,198,541	1,880,064
New Hampshire	843,000	6,883	20,232,000	928,649	1,456,704
New Jersey	5,974,000	9,345	143,376,000	6,580,958	10,323,072
New Mexico	1,167,000	2,096	28,008,000	1,285,567	2,016,576
New York	13,646,000	26,343	327,504,000	15,032,434	23,580,288
North Carolina	5,364,000	5,554	128,736,000	5,908,982	9,268,992
North Dakota	467,000	15,141	11,208,000	514,447	806,976
Ohio	8,313,000	19,750	199,512,000	9,157,601	14,364,864
Oklahoma	2,394,000	9,290	57,456,000	2,637,230	4,136,832
Oregon	2,311,000	8,366	55,464,000	2,545,798	3,993,408
Pennsylvania	9,212,000	33,242	221,088,000	10,147,939	15,918,336
Rhode Island	764,000	1,120	18,336,000	841,622	1,320,192
South Carolina	2,740,000	3,692	65,760,000	3,018,384	4,734,720
South Dakota	522,000	9,249	12,528,000	575,035	902,016
Tennessee	3,913,000	6,841	93,912,000	4,310,561	6,761,664
Texas	13,166,000	26,987	315,984,000	14,503,666	22,750,848
Utah	1,246,000	2,588	29,904,000	1,372,594	2,153,088
Vermont	429,000	8,021	10,296,000	472,586	741,312
Virginia	4,967,000	3,118	119,208,000	5,471,647	8,582,976
Washington	4,000,000	8,032	96,000,000	4,406,400	6,912,000
West Virginia	1,389,000	2,638	33,336,000	1,530,122	2,400,192
Wisconsin	3,777,000	18,238	90,648,000	4,160,743	6,526,656
Wyoming	343,000	2,338	8,232,000	377,849	592,704
	193,650,000	503,862	4,647,600,000	213,324,840	334,627,200

/1 Number of Voters: Congressional Quarterly Weekly Report, vol. 53, no. 15, April 15, 1995

/2 Number of Elected Officials per State is from the Census Bureau

/3 Volume of mail is based on twelve candidates sending two pieces of mail to each person of voting age

/4 Revenue forgone is based on the difference between the 3rd class bulk regular rate, 11.79, and the 3rd class nonprofit rate, 7.2, which is 4.59 per piece, times the volume

/5 Mail cost to candidates is based on 7.2 per piece, which is the average 3rd class nonprofit bulk rate, times the volume per election.

Costs of Campaign Finance Reform Per Election Year Calculated on a State by State Basis
 Calculated at Three Pieces of Mail per Voter from Twelve Candidates Per Election

State	Number of Potential Voters in State /1	Number of Elected Officials in State /2	Volume of Mail for Each Election /3	Revenue Forgone for Each Election /4	Mail Cost to Candidates for Each Election /5
Alabama	3,136,000	4,315	112,968,000	5,165,231	8,133,696
Alaska	429,000	1,665	15,444,000	708,880	1,111,968
Arizona	2,923,000	3,191	105,228,000	4,829,965	7,576,416
Arkansas	1,817,000	8,331	65,412,000	3,002,411	4,709,664
California	23,225,000	19,279	836,100,000	38,376,990	60,199,200
Colorado	2,713,000	8,035	97,668,000	4,482,961	7,032,096
Connecticut	2,486,000	9,929	89,496,000	4,107,866	6,443,712
Delaware	534,000	1,227	19,224,000	882,382	1,384,128
District of Columbia	452,000	325	16,272,000	746,885	1,171,584
Florida	10,856,000	5,368	390,816,000	17,936,454	28,138,752
Georgia	5,159,000	6,556	185,724,000	8,524,732	13,372,128
Hawaii	900,000	160	32,400,000	1,487,160	2,332,800
Idaho	803,000	4,678	28,908,000	1,326,877	2,081,376
Illinois	8,712,000	38,936	313,632,000	14,395,709	22,581,504
Indiana	4,298,000	11,355	154,728,000	7,102,015	11,140,416
Iowa	2,112,000	17,043	76,032,000	3,489,869	5,474,304
Kansas	1,889,000	16,410	68,004,000	3,121,384	4,896,268
Kentucky	2,857,000	7,481	102,852,000	4,720,907	7,405,344
Louisiana	3,100,000	4,985	111,600,000	5,122,440	8,035,200
Maine	931,000	7,147	33,516,000	1,538,384	2,413,152
Maryland	3,750,000	2,032	135,000,000	6,196,500	9,720,000
Massachusetts	4,564,000	13,888	164,304,000	7,541,554	11,829,888
Michigan	6,983,000	19,292	251,388,000	11,538,709	18,099,936
Minnesota	3,362,000	19,013	121,032,000	5,555,369	8,714,304
Mississippi	1,905,000	4,950	68,580,000	3,147,822	4,937,760
Missouri	3,902,000	17,115	140,472,000	6,447,665	10,113,984
Montana	623,000	5,646	22,428,000	1,029,445	1,614,816
Nebraska	1,192,000	15,064	42,912,000	1,969,661	3,089,664
Nevada	1,088,000	1,174	39,168,000	1,797,811	2,820,096
New Hampshire	843,000	6,883	30,348,000	1,392,972	2,185,056
New Jersey	5,974,000	9,345	215,064,000	9,871,438	15,484,608
New Mexico	1,167,000	2,096	42,012,000	1,928,351	3,024,864
New York	13,646,000	26,343	491,256,000	22,548,650	35,370,432
North Carolina	5,364,000	5,554	193,104,000	8,853,474	13,903,488
North Dakota	467,000	15,141	16,812,000	771,671	1,210,464
Ohio	8,313,000	19,750	299,268,000	13,736,401	21,547,296
Oklahoma	2,394,000	9,290	86,184,000	3,955,846	6,205,248
Oregon	2,311,000	8,366	83,196,000	3,818,696	5,990,112
Pennsylvania	9,212,000	33,242	331,632,000	15,221,909	23,877,504
Rhode Island	764,000	1,120	27,504,000	1,262,434	1,980,288
South Carolina	2,740,000	3,692	98,640,000	4,527,576	7,102,080
South Dakota	522,000	9,249	18,792,000	862,553	1,353,024
Tennessee	3,913,000	6,841	140,868,000	6,465,841	10,142,496
Texas	13,166,000	26,987	473,976,000	21,755,498	34,126,272
Utah	1,246,000	2,588	44,856,000	2,058,890	3,229,632
Vermont	429,000	8,021	15,444,000	708,880	1,111,968
Virginia	4,967,000	3,118	178,812,000	8,207,471	12,874,464
Washington	4,000,000	8,032	144,000,000	6,609,600	10,368,000
West Virginia	1,389,000	2,838	50,004,000	2,295,184	3,600,288
Wisconsin	3,777,000	18,238	135,972,000	6,241,115	9,789,984
Wyoming	343,000	2,338	12,348,000	566,773	889,056
	193,650,000	503,862	6,971,400,000	319,987,260	501,940,800

/1 Number of Voters. Congressional Quarterly Weekly Report, vol. 53, no. 15, April 15, 1995

/2 Number of Elected Officials per State is from the Census Bureau

/3 Volume of mail is based on twelve candidates sending three pieces of mail to each person of voting age

/4 Revenue forgone is based on the difference between the 3rd class bulk regular rate, 11.79, and the 3rd class nonprofit rate, 7.2, which is 4.59 per piece, times the volume

/5 Mail cost to candidates is based on 7.2 per piece, which is the average 3rd class nonprofit bulk rate, times the volume per election.

Costs of Campaign Finance Reform Per Election Year Calculated on a State by State Basis
 Calculated at Two Pieces of Mail per Voter from Twenty-four Candidates Per Election

State	Number of Potential Voters in State /1	Number of Elected Officials of Mail for /2	Volume Each Election /3	Revenue Forgone for Each Election /4	Mail Cost to Candidates for Each Election /5
Alabama	3,136,000	4,315	150,624,000	6,913,642	10,844,928
Alaska	429,000	1,865	20,592,000	945,173	1,482,624
Arizona	2,923,000	3,191	140,304,000	8,439,954	10,101,888
Arkansas	1,817,000	8,331	87,216,000	4,003,214	6,279,552
California	23,225,000	19,279	1,114,800,000	51,169,320	80,265,600
Colorado	2,713,000	8,035	130,224,000	5,977,282	9,376,128
Connecticut	2,486,000	9,929	119,328,000	5,477,155	8,591,616
Delaware	534,000	1,227	25,632,000	1,176,509	1,845,504
District of Columbia	452,000	325	21,696,000	995,846	1,562,112
Florida	10,856,000	5,368	521,088,000	23,917,939	37,518,336
Georgia	5,159,000	6,556	247,632,000	11,366,309	17,829,504
Hawaii	900,000	160	43,200,000	1,982,880	3,110,400
Idaho	803,000	4,678	38,544,000	1,769,170	2,775,168
Illinois	8,712,000	38,936	418,176,000	19,194,278	30,108,672
Indiana	4,298,000	11,355	206,304,000	9,469,354	14,853,888
Iowa	2,112,000	17,043	101,376,000	4,653,158	7,299,072
Kansas	1,889,000	16,410	90,672,000	4,161,845	6,528,384
Kentucky	2,857,000	7,481	137,136,000	6,294,542	9,873,792
Louisiana	3,100,000	4,985	148,800,000	6,829,920	10,713,600
Maine	931,000	7,147	44,688,000	2,051,179	3,217,536
Maryland	3,750,000	2,032	180,000,000	8,262,000	12,960,000
Massachusetts	4,564,000	13,888	219,072,000	10,055,405	15,773,184
Michigan	6,983,000	19,292	335,184,000	15,384,946	24,133,248
Minnesota	3,362,000	19,013	161,376,000	7,407,158	11,619,072
Mississippi	1,905,000	4,950	91,440,000	4,197,096	6,583,680
Missouri	3,902,000	17,115	187,296,000	8,596,886	13,485,312
Montana	623,000	5,646	29,904,000	1,372,594	2,153,088
Nebraska	1,192,000	15,064	57,216,000	2,626,214	4,119,552
Nevada	1,088,000	1,174	52,224,000	2,397,082	3,760,128
New Hampshire	843,000	6,883	40,464,000	1,857,298	2,913,408
New Jersey	5,974,000	9,345	286,752,000	13,161,917	20,646,144
New Mexico	1,167,000	2,096	56,016,000	2,571,134	4,033,152
New York	13,646,000	26,343	655,008,000	30,064,867	47,160,576
North Carolina	5,364,000	5,554	257,472,000	11,817,965	18,537,984
North Dakota	467,000	15,141	22,416,000	1,028,894	1,613,952
Ohio	8,313,000	19,750	399,024,000	18,315,202	28,729,728
Oklahoma	2,394,000	9,290	114,912,000	5,274,461	8,273,664
Oregon	2,311,000	8,366	110,928,000	5,091,595	7,986,816
Pennsylvania	9,212,000	33,242	442,176,000	20,295,878	31,836,672
Rhode Island	764,000	1,120	36,672,000	1,683,245	2,640,384
South Carolina	2,740,000	3,692	131,520,000	6,036,768	9,469,440
South Dakota	522,000	9,249	25,056,000	1,150,070	1,804,032
Tennessee	3,913,000	6,841	187,824,000	8,621,122	13,523,328
Texas	13,166,000	26,987	631,968,000	29,007,331	45,501,696
Utah	1,246,000	2,588	59,808,000	2,745,187	4,306,176
Vermont	429,000	8,021	20,592,000	945,173	1,482,624
Virginia	4,967,000	3,118	238,416,000	10,943,294	17,165,952
Washington	4,000,000	8,032	192,000,000	8,812,600	13,824,000
West Virginia	1,389,000	2,838	66,672,000	3,060,245	4,800,384
Wisconsin	3,777,000	16,238	161,296,000	8,321,466	13,053,312
Wyoming	343,000	2,338	16,464,000	755,698	1,185,408
	193,650,000	503,862	9,295,200,000	426,649,680	669,254,400

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/5 Mail cost to candidates is based on a 7.2 per piece, which is the average 3rd class nonprofit bulk rate, times the volume per election.

Costs of Campaign Finance Reform Per Election Year Calculated on a State by State Basis
Calculated at Three Pieces of Mail per Voter from Twenty-four Candidates Per Election

State	Number of Potential Voters in State /1	Number of Elected Officials in State /2	Volume of Mail for Each Election /3	Revenue Forgone for Each Election /4	Mail Cost to Candidates for Each Election /5
Alabama	3,138,000	4,315	225,936,000	10,370,462	16,267,392
Alaska	429,000	1,865	30,888,000	1,417,759	2,223,936
Arizona	2,923,000	3,191	210,456,000	9,659,930	15,152,832
Arkansas	1,817,000	8,331	130,824,000	6,004,822	9,419,328
California	23,225,000	19,279	1,672,200,000	76,753,980	120,398,400
Colorado	2,713,000	8,035	195,336,000	8,965,922	14,064,192
Connecticut	2,486,000	9,929	178,992,000	8,215,733	12,887,424
Delaware	534,000	1,227	38,448,000	1,764,763	2,768,256
District of Columbia	452,000	325	32,544,000	1,493,770	2,343,168
Florida	10,856,000	5,368	781,632,000	35,876,909	56,277,504
Georgia	5,159,000	6,556	371,448,000	17,049,463	26,744,256
Hawaii	900,000	160	64,800,000	2,974,320	4,665,600
Idaho	803,000	4,678	57,816,000	2,653,754	4,162,752
Illinois	8,712,000	38,936	627,264,000	28,791,418	45,163,008
Indiana	4,298,000	11,355	309,456,000	14,204,030	22,280,832
Iowa	2,112,000	17,043	152,064,000	6,979,738	10,948,608
Kansas	1,889,000	16,410	136,008,000	6,242,767	9,792,576
Kentucky	2,857,000	7,481	205,704,000	9,441,814	14,810,688
Louisiana	3,100,000	4,985	223,200,000	10,244,880	16,070,400
Maine	931,000	7,147	67,032,000	3,076,769	4,826,304
Maryland	3,750,000	2,032	270,000,000	12,393,000	19,440,000
Massachusetts	4,564,000	13,888	328,608,000	15,083,107	23,659,776
Michigan	6,983,000	19,292	502,776,000	23,077,418	36,199,872
Minnesota	3,362,000	19,013	242,064,000	11,110,738	17,426,608
Mississippi	1,905,000	4,950	137,160,000	6,295,644	9,875,520
Missouri	3,902,000	17,115	280,944,000	12,895,330	20,227,968
Montana	623,000	5,646	44,856,000	2,058,890	3,229,632
Nebraska	1,192,000	15,064	85,824,000	3,939,322	6,179,328
Nevada	1,088,000	1,174	78,336,000	3,595,622	5,640,192
New Hampshire	843,000	6,883	60,696,000	2,785,946	4,370,112
New Jersey	5,974,000	9,345	430,128,000	19,742,875	30,969,216
New Mexico	1,167,000	2,096	84,024,000	3,856,702	6,049,728
New York	13,646,000	26,343	982,512,000	45,097,301	70,740,864
North Carolina	5,364,000	5,554	386,208,000	17,726,947	27,806,976
North Dakota	467,000	15,141	33,624,000	1,543,342	2,420,928
Ohio	8,313,000	19,750	598,536,000	27,472,802	43,094,592
Oklahoma	2,394,000	9,290	172,368,000	7,911,691	12,410,496
Oregon	2,311,000	8,366	166,392,000	7,637,393	11,980,224
Pennsylvania	9,212,000	33,242	663,264,000	30,443,818	47,755,008
Rhode Island	764,000	1,120	55,008,000	2,524,867	3,960,576
South Carolina	2,740,000	3,692	197,280,000	9,055,152	14,204,160
South Dakota	522,000	9,249	37,584,000	1,725,106	2,706,048
Tennessee	3,913,000	6,841	281,736,000	12,931,682	20,284,992
Texas	13,166,000	26,987	947,952,000	43,510,997	68,252,544
Utah	1,246,000	2,588	89,712,000	4,117,781	6,459,264
Vermont	429,000	8,021	30,888,000	1,417,759	2,223,936
Virginia	4,967,000	3,118	357,624,000	16,414,942	25,748,928
Washington	4,000,000	8,032	288,000,000	13,219,200	20,736,000
West Virginia	1,389,000	2,838	100,008,000	4,590,367	7,200,576
Wisconsin	3,777,000	18,238	271,944,000	12,482,230	19,579,968
Wyoming	343,000	2,338	24,696,000	1,133,546	1,778,112
	193,650,000	503,862	13,942,800,000	639,974,520	1,003,881,600

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Costs of Campaign Finance Reform Per Election Year Calculated on a State by State Basis
Calculated at Two Pieces of Mail per Voter from Thirty-six Candidates Per Election

State	Number of Potential Voters in State /1	Number of Elected Officials of Mail for in State /2	Volume Each Election /3	Revenue Forgone for Each Election /4	Mail Cost to Candidates for Each Election /5
Alabama	3,138,000	4,315	225,936,000	10,370,462	16,267,392
Alaska	429,000	1,865	30,888,000	1,417,759	2,223,936
Arizona	2,923,000	3,191	210,456,000	9,659,930	15,152,632
Arkansas	1,817,000	8,331	130,824,000	6,004,822	9,419,328
California	23,225,000	19,279	1,672,200,000	76,753,980	120,398,400
Colorado	2,713,000	6,035	195,336,000	8,965,922	14,064,192
Connecticut	2,486,000	9,929	178,992,000	8,215,733	12,887,424
Delaware	534,000	1,227	38,448,000	1,764,763	2,768,256
District of Columbia	452,000	325	32,544,000	1,493,770	2,343,168
Florida	10,856,000	5,368	781,632,000	35,876,909	56,277,504
Georgia	5,159,000	6,556	371,448,000	17,049,463	26,744,256
Hawaii	900,000	160	64,800,000	2,974,320	4,665,600
Idaho	803,000	4,678	57,816,000	2,653,754	4,162,752
Illinois	8,712,000	38,936	627,264,000	28,791,418	45,163,008
Indiana	4,298,000	11,355	309,456,000	14,204,030	22,280,832
Iowa	2,112,000	17,043	152,064,000	6,979,738	10,948,608
Kansas	1,889,000	16,410	136,008,000	6,242,767	9,792,576
Kentucky	2,857,000	7,481	205,704,000	9,441,814	14,810,688
Louisiana	3,100,000	4,985	223,200,000	10,244,880	16,070,400
Maine	931,000	7,147	67,032,000	3,076,769	4,826,304
Maryland	3,750,000	2,032	270,000,000	12,393,000	19,440,000
Massachusetts	4,564,000	13,888	328,608,000	15,083,107	23,659,776
Michigan	6,983,000	19,292	502,776,000	23,077,418	36,199,872
Minnesota	3,362,000	19,013	242,064,000	11,110,738	17,428,608
Mississippi	1,905,000	4,950	137,160,000	6,295,644	9,875,520
Missouri	3,902,000	17,115	280,944,000	12,695,330	20,227,968
Montana	623,000	5,646	44,856,000	2,058,890	3,229,632
Nebraska	1,192,000	15,064	85,824,000	3,939,322	6,179,328
Nevada	1,088,000	1,174	78,336,000	3,595,622	5,640,192
New Hampshire	843,000	6,883	60,696,000	2,785,946	4,370,112
New Jersey	5,974,000	9,345	430,128,000	19,742,875	30,969,216
New Mexico	1,167,000	2,096	84,024,000	3,856,702	6,049,728
New York	13,646,000	26,343	982,512,000	45,097,301	70,740,864
North Carolina	5,364,000	5,554	386,208,000	17,726,947	27,806,976
North Dakota	467,000	15,141	33,624,000	1,543,342	2,420,928
Ohio	8,313,000	19,750	598,536,000	27,472,802	43,094,592
Oklahoma	2,394,000	9,290	172,368,000	7,911,691	12,410,496
Oregon	2,311,000	8,366	166,392,000	7,637,393	11,980,224
Pennsylvania	9,212,000	33,242	663,264,000	30,443,818	47,755,008
Rhode Island	764,000	1,120	55,008,000	2,524,867	3,960,576
South Carolina	2,740,000	3,692	197,280,000	9,055,152	14,204,160
South Dakota	522,000	9,249	37,584,000	1,725,106	2,706,048
Tennessee	3,913,000	6,841	281,736,000	12,931,682	20,284,992
Texas	13,166,000	26,987	947,952,000	43,510,997	68,252,544
Utah	1,246,000	2,588	89,712,000	4,117,781	6,459,264
Vermont	429,000	6,021	30,888,000	1,417,759	2,223,936
Virginia	4,967,000	3,118	357,624,000	16,414,942	25,748,928
Washington	4,000,000	6,032	288,000,000	13,219,200	20,736,000
West Virginia	1,389,000	2,838	100,008,000	4,590,367	7,200,576
Wisconsin	3,777,000	18,238	271,944,000	12,482,230	19,579,968
Wyoming	343,000	2,338	24,696,000	1,133,546	1,778,112
	193,650,000	503,662	13,942,800,000	639,974,520	1,003,661,600

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Costs of Campaign Finance Reform Per Election Year Calculated on a State by State Basis
Calculated at Three Pieces of Mail per Voter from Thirty-six Candidates Per Election

State	Number of Potential Voters in State /1	Number of Elected Officials in State /2	Volume Each Election /3	Revenue Forgone for Each Election /4	Mail Cost to Candidates for Each Election /5
Alabama	3,138,000	4,315	338,904,000	15,555,694	24,401,088
Alaska	429,000	1,865	46,332,000	2,126,639	3,335,904
Arizona	2,923,000	3,191	315,684,000	14,489,896	22,729,248
Arkansas	1,817,000	8,331	196,236,000	9,007,232	14,128,992
California	23,225,000	19,279	2,508,300,000	115,130,970	180,597,600
Colorado	2,713,000	8,035	293,004,000	13,448,884	21,096,288
Connecticut	2,486,000	9,929	268,488,000	12,323,599	19,331,136
Delaware	534,000	1,227	57,672,000	2,647,145	4,152,384
District of Columbia	452,000	325	48,816,000	2,240,654	3,514,752
Florida	10,856,000	5,368	1,172,448,000	53,815,363	84,416,256
Georgia	5,159,000	6,556	557,172,000	25,574,195	40,116,384
Hawaii	900,000	160	97,200,000	4,461,480	6,998,400
Idaho	803,000	4,678	86,724,000	3,980,632	6,244,128
Illinois	8,712,000	38,936	940,896,000	43,187,126	67,744,512
Indiana	4,298,000	11,355	464,184,000	21,306,046	33,421,248
Iowa	2,112,000	17,043	228,096,000	10,469,606	16,422,912
Kansas	1,889,000	16,410	204,012,000	9,364,151	14,688,864
Kentucky	2,857,000	7,481	308,556,000	14,162,720	22,216,032
Louisiana	3,100,000	4,985	334,800,000	15,367,320	24,105,600
Maine	931,000	7,147	100,548,000	4,615,153	7,239,456
Maryland	3,750,000	2,032	405,000,000	18,589,500	29,160,000
Massachusetts	4,564,000	13,888	492,912,000	22,624,661	35,489,564
Michigan	6,983,000	19,292	754,164,000	34,616,128	54,299,808
Minnesota	3,362,000	19,013	363,096,000	16,666,106	26,142,912
Mississippi	1,905,000	4,950	205,740,000	9,443,466	14,813,280
Missouri	3,902,000	17,115	421,416,000	19,342,994	30,341,952
Montana	623,000	5,646	67,284,000	3,088,336	4,844,448
Nebraska	1,192,000	15,064	128,736,000	5,908,982	9,268,992
Nevada	1,088,000	1,174	117,504,000	5,393,434	8,460,288
New Hampshire	843,000	6,883	91,044,000	4,176,920	6,555,168
New Jersey	5,974,000	9,345	645,192,000	29,614,313	46,453,824
New Mexico	1,167,000	2,096	126,036,000	5,785,052	9,074,592
New York	13,646,000	26,343	1,473,768,000	67,645,951	106,111,296
North Carolina	5,364,000	5,554	579,312,000	26,590,421	41,710,464
North Dakota	467,000	15,141	50,436,000	2,315,012	3,631,392
Ohio	8,313,000	19,750	897,804,000	41,209,204	64,641,888
Oklahoma	2,394,000	9,290	258,552,000	11,867,537	18,615,744
Oregon	2,311,000	8,366	249,588,000	11,456,089	17,970,336
Pennsylvania	9,212,000	33,242	994,896,000	45,665,726	71,632,512
Rhode Island	764,000	1,120	82,512,000	3,787,301	5,940,864
South Carolina	2,740,000	3,692	295,920,000	13,582,728	21,306,240
South Dakota	522,000	9,249	56,376,000	2,587,658	4,059,072
Tennessee	3,913,000	6,841	422,604,000	19,397,524	30,427,488
Texas	13,166,000	26,987	1,421,928,000	65,266,495	102,378,816
Utah	1,246,000	2,588	134,568,000	6,176,671	9,688,696
Vermont	429,000	6,021	46,332,000	2,126,639	3,335,904
Virginia	4,967,000	3,116	536,436,000	24,822,412	38,623,392
Washington	4,000,000	6,032	432,000,000	19,828,800	31,104,000
West Virginia	1,389,000	2,838	150,012,000	6,885,551	10,800,864
Wisconsin	3,777,000	18,238	407,916,000	18,723,344	29,369,952
Wyoming	343,000	2,336	37,044,000	1,700,320	2,667,168
	193,650,000	503,862	20,914,200,000	959,961,780	1,505,822,400

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CAMPAIGN FINANCE REFORM

Some Lessons from the Data

Michael J. Malbin

It is amazing how little the debate over campaign finance has changed over the past 20 years. Two decades ago, the public's attention was riveted by the Senate Watergate hearings. After those hearings, Congress adopted a package for congressional and presidential elections that included imperfect but reasonably effective disclosure, an independent Federal Election Commission, and limits on campaign contributions. For presidential elections, the federal law provided public financing for qualified candidates who agreed to limit their campaign spending.

The original 1974 law also required congressional candidates to limit their spending, without giving those candidates any public funding in return. But the Supreme Court ruled in *Buckley v. Valeo*¹ that mandatory spending limits violated a candidate's right of free speech. At the same time, however, the *Buckley* case upheld spending limits for presidential elections because those candidates did not have to adhere to a spending limit under the law unless they voluntarily chose to do so in order to get public campaign funds.

Since the *Buckley* case, almost all attempts at changing the federal law have involved efforts to extend a presidential-style public funding system, combined with spending limits, to Congress. State and local reform efforts have also tended to focus on similar kinds of packages. This includes, but is not limited to, New York. For example, the New York State Assembly in 1993 passed a bill at the request of the Governor (Assembly Bill No. 1) that included a public matching grant system, and spending limits, that in many respects looks like the package that already exists for presidential primaries. Similar bills were filed in at least 13 different states in the early 1990s. This is in addition to the nine states that already have a version of partial public financing for some candidates — most of which, like the federal program, are experiencing financial difficulty.

The fact that similar provisions are being offered in different jurisdictions is not by itself a problem. What is a problem is how little change there has been in the arguments and evidence offered by so many of the participants who appear on all sides of this ongoing debate. That is a pity. The federal law has been working for five presidential and nine congressional election cycles. Over the course of these 18 years, the Federal Election Commission (FEC) has become a highly professional, dependable, and sophisticated source of computer-generated information on federal campaign finance. Because of the wealth of FEC material available on paper, on computer tape, and directly from the FEC's computer over a modem, we now have solid empirical evidence

that bears upon some of the key assumptions made on both sides of the debate. Instead of repeating the old "common sense" arguments, therefore, it would be better if all participants — whether at the national, state, or local level — began sorting out their assumptions on the basis of what we now know.

I shall not pretend that the empirical evidence will settle all issues. On the contrary: the remainder of this article is likely to stimulate controversy about the impact of money on the level of competition between congressional incumbents and challengers. Supporters and opponents of the standard reform bills will find me disagreeing with at least some of the premises on which their positions usually rely. My only request is that the conclusions not be rejected out of hand, without a hard look at the data.

Underfinanced Challengers

Spending for congressional election campaigns was almost 50 percent higher in 1992 than in 1990. Moreover:

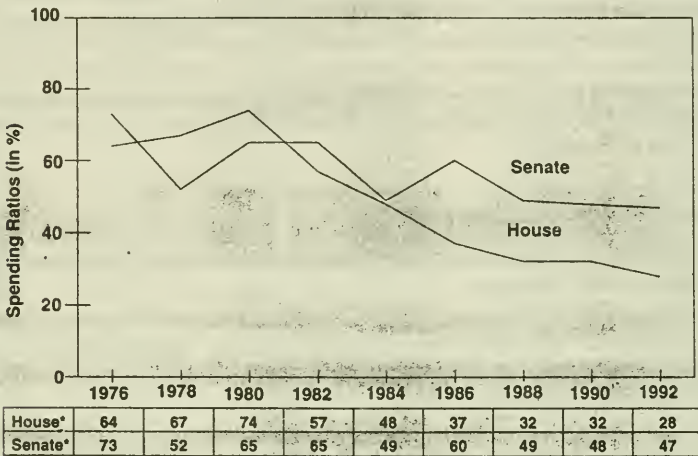
1. Much of the spending increase for House elections was made up of increased spending by incumbents, signaling a continued deterioration in the relative financial strength of challengers compared to incumbents (see Figure 1).
2. In addition, the relative weakness of the challengers seems to have been reflected in the results. Only 19 House incumbents lost to challengers in the general election, despite the uncertainties caused by redistricting, and despite the general anti-incumbency mood shown by the success of 14 out of 14 term limit initiatives on statewide ballots.

Taken in isolation, these figures seem to support the proposition that the reason so few incumbents lose is that they are getting too rich and blowing the competition away. I would argue, however, that the real problem is not that incumbents have too much money, but that challengers have too little. A few numbers from the 1992 congressional elections will show just how far away most challengers are from having to worry about how much their opponents spend. The 288 major party, general election challengers in 1992 raised an average of \$167,891. That was barely the same nominal amount that the average challenger was able to raise eight years before — without even correcting for inflation. The problem becomes even more stark if we look at realistic threshold figures for mounting a campaign.

During the past several election cycles, the average successful congressional challenger has had to spend at least \$450,000 - \$500,000 to defeat a sitting incumbent. In 1992, 252 congressional candidates were able to spend \$500,000. Of these, 184 were incumbents, 53 were open-seat candidates, and only 15 were challengers.

Or consider a lower hurdle. In most congressional districts, it would cost a candidate at least \$200,000 to cross the threshold of visibility and credibility. There were 548 candidates who spent \$200,000 or more in 1992: 324 incumbents, 135 open-seat candidates, and 89 challengers. In other words, even in an allegedly anti-incumbent year, almost three-quarters (250 of 349) of the incumbents in the 1992 general election did not have to face a challenger who could afford to spend \$200,000.

Figure 1
Challenger-Incumbent Spending Ratios, 1976-1992 (in percentages)



* Mean challenger spending as percentage of the mean spending by incumbents.

Source: N. Ornstein, T. Mann, and M. Malbin, *Vital Statistics on Congress, 1993-94*. Washington, D.C.: CQ Press, 1993, p. 81.

These numbers alert us to a basic fact: if you want to predict how competitive an election is likely to be, the single most important campaign finance number to know is the amount of money the challenger has raised.² Nothing about the incumbent is as important or as revealing as the condition of the challenger. In every election since public disclosure, there has been a clear correlation between challenger fund raising and challenger success. To put the point simply, challengers who do well tend to spend *much* more money than ones who do poorly — an average of \$281,261 for losing challengers who received 40-49 percent of the 1992 vote, versus \$87,931 for those who received less than 40 percent (see Figure 2). In addition, challengers who win tend to spend more — \$451,201 in 1992 — than those who lose.

Winning challengers have to be good fund raisers, but they do *not* have to spend as much as their incumbent opponents to win. Defeated incumbents spent an average of \$965,537 in 1992, more than twice as much as the challengers who beat them. Even more surprisingly, how much money the incumbents spend does not tell you how well they will do. In 1992, the average defeated incumbent spent \$965,537; incumbents with 50-59 percent of the vote spent \$784,303; incumbents with 60 percent or more spent \$486,681. In other words, what really seems to matter is the amount of money challengers can raise and not the amount spent by incumbents.

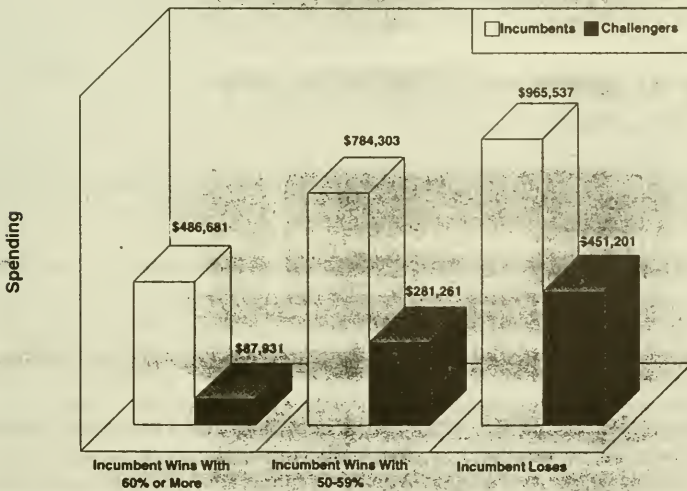
Paradox Explained

It almost looks, political scientist Gary C. Jacobson once wrote, as if the more an incumbent spends, the worse the incumbent will do.³ Of course, that is an overstatement: very few candidates actually hurt themselves by spending more money. Nevertheless, a little knowledge about congressional elections can go a long way toward explaining why money means more to the challenger than it does to the incumbent.

The average House member spends about \$500,000 per year (\$1,000,000 per two-year election cycle) for the salaries of the members of his or her personal staff. Since a full one-third of personal House staffs are based in congressional district offices, and since a fair amount of the time of Washington-based press secretaries, legislative correspondents, and the like, is also spent on district business, it seems conservative to estimate that the average member devotes at least half of his or her office staff allotment to constituency communication. That comes to about \$500,000 per election cycle per member. Add another \$175,000 or so per election cycle for the average member's franked postage costs, then throw in subsidized television studios, computerized mail systems, and highly favorable local press coverage, and you begin to understand something of the advantage that incumbents have before the campaign even begins.

Figure 2

Incumbent and Challenger Spending in 1992 House Races, by Margin of Victory

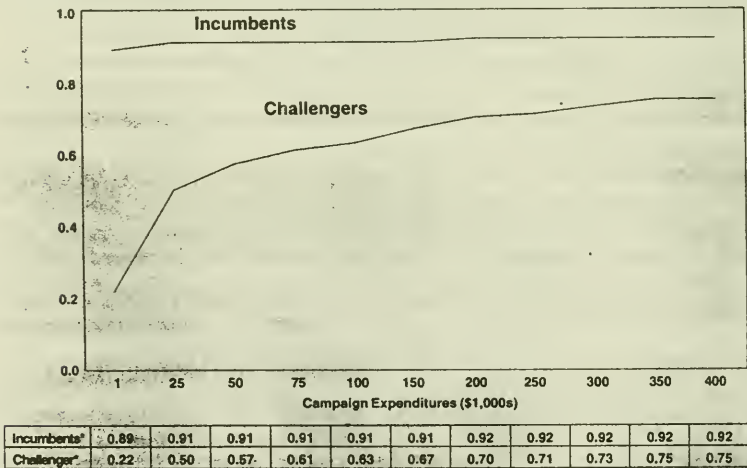


Source: Derived from Federal Election Commission data.

This advantage is reflected in surveys of congressional voters. According to the American National Election Studies, more than 90 percent of the voters typically can recognize the name of their incumbent Member of Congress, compared to barely 50 percent who can recognize the name of the challenger. Campaign funds may not be useless for an incumbent, but there is little that spending can do to boost an incumbent's name recognition. As Figure 3 shows, raising an incumbent's expenditures from \$1,000 to \$500,000 will only shift the recognition rate from 88 to 92 percent. By contrast, the challenger would shift from 22 percent to 75 percent rate of recognition with a comparable shift in expenditure levels.

Only after a challenger's name becomes known can he or she begin drawing contrasts with the incumbent and shift the campaign to more substantive issues. Once the campaign centers on such issues, the situation is more fluid than when it merely pits the incumbent's well-known, comfortable personality against a little-known challenger. An incumbent with effective opposition naturally will spend more money than an incumbent whose opposition is unknown. That explains why higher spending incumbents do worse than incumbents who spend less. They do worse because the challengers have managed to shift the debate to more meaningful grounds.

Figure 3
Probability That a Voter Will Recognize a Candidate's Name (1984)



* The probability that a voter will recognize an incumbent or a challenger at each spending level.
Source: Gary C. Jacobson, *Congressional Elections*, 2nd ed. Boston: Little, Brown, 1987, p. 125.

It follows, therefore, that if the aim is to make elections more competitive, more challengers will need to have enough money to mount serious campaigns. The money could come from a public cash subsidy (the Democratic approach), letting the parties give more to challengers (the Republican approach) or any other device (such as free postage or air time for all general election candidates) that would get more money to challengers. The source of the money matters little. What matters is the money.

Spending Limits

Spending limits are another matter entirely. At their best, they are largely irrelevant. With members of Congress spending at least three-quarters of a million dollars in office funds to enhance their own reputations, equal campaign spending would not do anything to improve a challenger's chances for victory. Of course, that does not settle whether spending limits should be enacted. The proponents of limits put forward additional reasons for supporting the concept, such as the claim that the limits will reduce the time office holders devote to raising money.

Some of these additional reasons undoubtedly have merit, but they also need to be weighed against the problems uncovered by 18 years worth of federal experience. The record shows that if the limits are set low enough to cramp spending significantly, highly motivated politicians will find ways to get around them.

Over the course of five elections, the presidential candidates, national political parties, and their supporters have all but perfected the art of legally evading the limits. As a result, the level of spending has increased in every presidential election since public funding began, with more and more of the money going off the books and into the legal underground. The official, publicly funded candidates' campaigns now make up less than half of what is spent to support a major party, general election campaign for the presidency.⁴

If politically active, potential contributors care enough about an election, they will find ways to get involved. If they are wealthy, well organized, and cannot contribute directly, then they will look at independent expenditures, or delegate committees, or registration and get-out-the-vote drives, or communicating with members, or buying issue ads that publicize the position of an incumbent without directly advocating election or defeat, or any of a dozen other devices, some of which have not yet been invented.

Off-the-book activities like these have become a more significant part of every election since 1976. Some of them can be regulated, but there is no way they all can be eliminated without running roughshod over the First Amendment. Moreover, all of these devices favor the well-organized and the powerful over smaller participants. What the limits seem to be doing in presidential elections, therefore, is to encourage the powerful to engage in subterfuge and legal gamesmanship, leading to activities that end up being poorly disclosed. As a cure for cynicism or corruption, this is truly bizarre. It undermines the one item, disclosure, without which everything else in the law becomes meaningless.

Analysis and the Policy Process

The proposals that flow from the above analysis seem almost to write themselves:

- Give all general election candidates some public funding, free postage (to be paid for by reducing the postage available to officeholders), or free airtime (to be required of broadcasters as a condition for gaining monopoly use of a frequency).
- If public money is not acceptable, use differential contribution limits to permit nonincumbents to accept larger seed-money contributions early in the campaign.
- Do not impose spending limits.
- Retain and strengthen existing disclosure rules and contribution limits.

But politics, like the rest of life, is never as straightforward as academic policy analysis. The problem is that most Democrats in Congress have decided that “real reform” has to include spending limits whether or not there is money for challengers, and most Republicans — joined by some southern Democrats — are deeply opposed to public financing. Why so many Democrats have made spending limits the *sine qua non* of reform is beyond this author’s conjecture, but the substantive difficulty of their position has already been explored.

The position of the Republicans in Congress is equally hard to understand. To some extent, it is an extension of an insinctive GOP skepticism toward new spending programs. But, as our earlier discussion of office expenses should have made clear, it is naive to think public funds are not being used now to help election campaigns. The problem is that the public only pays for the incumbents! In fact, if publicly funded staff were not so effective at building up the power of incumbency, challengers would not be in the desperate position most are now in.

But whatever my own position may be, it is a lot easier politically to put together a coalition of Democrats and Republicans who support spending limits than it is to find one that wants more money for challengers. That is exactly what happened in the U.S. Senate in June, and is likely to happen again when a bill reaches the House floor. Senate Democrats gave up on the public money that would help challengers, while the Republicans who joined them to break a filibuster were able to preserve their anti-public financing purity. What came out was a bill that had limits, but no money — the exact opposite of what I think would be most beneficial for the democratic process.

All this is a long way of pointing out that the heat of a legislative battle is not the best time to ask people to take a fresh look at the evidence and rethink their premises. If serious rethinking is going to occur, the work should start now. That would be particularly useful in state legislatures where the issue is not on the immediate agenda — where there still is some time for rethinking before the final coalition building is at hand.

Notes

1. *Buckley v. Valeo* 424 U.S. 1 (1976).
2. This point was first made by Gary C. Jacobson, *Money in Congressional Elections*. New Haven, CT: Yale University Press, 1980.
3. *Ibid.*
4. Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election*. Boulder, CO: Westview, 1991. ■

HALEY BARBOUR

Mr. Barbour was elected Chairman of the Republican National Committee in January of 1993 and was re-elected in January of 1995. Prior to his election as Chairman, Mr. Barbour was a practicing attorney and partner in the law firm of Barbour and Rogers. In 1985, he took a hiatus from his law practice to serve President Reagan as director of the White House Office of Political Affairs. Mr. Barbour also served as a senior advisor to the George Bush for President campaign in 1988.

A longtime Southern GOP leader, Mr. Barbour, after having worked in both of the successful Nixon for President campaigns at the state level, served from 1973 to 1976 as executive director of the Mississippi Republican Party and the Southern Association of Republican State Chairmen.

Mr. Barbour, a seventh-generation Mississippian, was the Republican nominee for the U.S. Senate in 1982; he lost to the 35-year incumbent, Senator John Stennis. Since 1984, he has served as Republican National Committeeman for Mississippi.

Mr. Barbour received his law degree from the University of Mississippi in 1973 and for thirteen years was a partner in the law firm of Henry, Barbour and DeCell of Yazoo City, Mississippi. Mr. Barbour and his wife Marsha have two sons.

DONALD L. FOWLER

Mr. Fowler has been a Democratic National Committee member since 1971 and served for fourteen years on the Executive Committee of the DNC and as Co-chair of the Rules and Bylaws Committee for ten years. He was also the Chief Executive Officer of the 1988 Democratic National Convention in Atlanta.

Mr. Fowler was Chairman of the South Carolina Democratic Party from 1971 to 1980 and President of the Association of State Democratic Chairs from 1975 to 1977.

Prior to his election as Chairman of the DNC, Mr. Fowler was President of Fowler Communications, Inc. He has a B.A. degree in psychology from Wofford College and a Masters degree in Public Administration and a Doctorate in Political Science from the University of Kentucky.

In 1987, Mr. Fowler retired as a Colonel in the United States Army Reserve. During his active and reserve duty, he was awarded the Army Commendation Medal, the Meritorious Service Medal and the Legion of Merit. Mr. Fowler and his wife Septima have two children.



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May 29, 1996

Mr. Jack Sousa
Chief Democratic Counsel
Senate Committee on Rules and Administration
479 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Mr. Sousa:

Thank you for your interest in the broadcasting provisions of the campaign finance reform legislation currently being considered by the Rules Committee. During the May 15 hearing, questions were raised on broadcast expenditures, specifically for Senate candidates. I hope the following information will be helpful.

The NAB does not have an analysis of Senate only expenditures. However, the *Handbook of Campaign Spending: Money in the 1992 Congressional Races*, a book written by LA Times reporters Dwight Morris and Murielle Gamache, provides an analysis of campaign spending by Senate candidates in the 1992 elections. The authors break down expenditures into seven distinct categories; the relevant page for Senate candidates is attached. The authors use Federal Election Commission reports filed by the candidates as their source of data. The FEC defines electronic media expenditures as "all payments to consultants, separate purchases of broadcast time, and production costs associated with the development of radio and television advertising."

In addition, a request was made to provide an analysis of political advertising expenditures for radio only. The NAB does not have a separate analysis of radio political advertising revenue. We have also checked with other organizations that monitor radio advertising revenues. None of these organizations specifically identify political advertising expenditures for radio.

I have also enclosed a corrected "Analysis of 50% Discount from Lowest Unit Charge (LUC)" chart included in the NAB testimony. The value of lost political and commercial advertising was overstated in the original document and we have replaced average station with median station values, a more accurate depiction of the broadcast environment. I apologize for any confusion this error might have caused.

Again, thank you for giving us the opportunity to respond to the questions. Should you need further clarifications, or need additional information for the hearing record, please do not hesitate to call.

Sincerely,

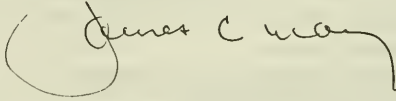
A handwritten signature in dark ink, appearing to read "James C. May". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail that extends to the right.

Table 1-1 What Campaign Money Buys in the 1992 Senate Races: Total Expenditures

Major Category	Incumbents in			Challengers in			Open Seats
	Total	Hot Races ^a	Contested Races ^b	Total	Hot Races ^a	Contested Races ^b	
Overhead							
Office furniture/supplies	\$ 2,138,579	\$ 1,655,100	\$ 483,480	\$ 959,838	\$ 846,126	\$ 113,711	\$ 689,957
Rent/utilities	1,295,489	1,038,579	256,911	647,697	536,876	110,821	489,631
Salaries	9,062,286	6,968,809	2,093,478	6,124,369	5,446,217	678,152	5,182,451
Taxes	4,744,248	3,532,457	1,211,790	1,447,210	1,253,826	193,383	1,127,419
Bank/investment fees	140,733	114,660	26,074	48,842	46,627	2,214	56,936
Lawyers/accountants	1,520,892	1,150,329	370,563	378,807	372,002	6,805	260,456
Telephone	1,690,864	1,392,283	298,581	1,461,799	1,269,403	192,396	926,505
Campaign automobile	586,888	488,834	98,054	95,674	71,121	24,553	12,872
Computers/office equipment	1,483,906	1,117,387	366,519	817,681	749,928	67,753	450,141
Travel	5,647,008	4,111,695	1,535,313	1,711,246	1,561,675	149,571	1,332,866
Food/meetings	651,655	503,449	148,206	33,475	31,111	2,364	45,820
Total Overhead	28,962,549	22,073,582	6,888,968	13,726,638	12,184,914	1,541,724	10,575,054
Fund Raising							
Events	11,953,477	9,342,020	2,611,457	3,533,953	3,300,064	233,890	3,025,578
Direct mail	11,183,186	9,747,584	1,435,602	6,719,959	6,420,685	229,273	5,423,654
Telemarketing	690,252	339,944	350,308	715,069	696,805	18,265	475,225
Total Fund Raising	23,826,914	19,429,548	4,397,366	10,968,982	10,487,554	481,428	8,924,458
Polling	3,452,440	2,644,700	807,739	1,426,095	1,253,330	172,765	1,114,642
Advertising							
Electronic media	46,141,090	38,338,087	7,803,002	25,576,877	23,657,286	1,919,591	20,071,775
Other media	924,413	696,847	227,566	336,177	251,164	85,014	321,355
Total Advertising	47,065,503	39,034,934	8,030,569	25,913,054	23,908,449	2,004,605	20,393,130
Other Campaign Activity							
Persuasion mail/brochures	3,119,520	2,580,865	538,654	1,827,876	1,588,216	239,661	1,062,077
Actual campaigning	5,921,553	4,807,956	1,113,597	3,111,176	2,928,548	182,628	2,756,360
Staff/Volunteers	73,252	47,418	25,834	28,080	27,137	943	18,282
Total Other Campaign Activity	9,114,325	7,436,239	1,678,086	4,967,132	4,543,901	423,231	3,836,719
Constituent Gifts/Entertainment	834,972	530,990	303,981	31,697	31,457	239	20,484
Donations to							
Candidates from same state	100,941	37,758	63,183	3,986	3,986	0	4,988
Candidates from other states	170,643	74,581	96,062	1,026	1,026	0	2,000
Civic organizations	330,014	249,969	80,045	4,663	3,674	990	10,910
Ideological groups	70,820	39,087	31,733	5,849	5,579	270	2,712
Political parties	893,828	322,177	571,651	11,437	9,787	1,650	18,671
Total Donations	1,566,247	723,573	842,674	26,961	24,052	2,910	39,280
Unitemized Expenses	1,354,599	1,011,801	342,797	599,478	453,917	145,561	331,569
Total Expenditures	\$116,177,549	\$92,885,368	\$23,292,181	\$57,660,036	\$52,887,574	\$4,772,463	\$45,235,336

Note: Totals are for the entire six-year cycle, including special elections.

^aRaces where incumbent garners 60 percent or less of the vote.^bRaces where incumbent garners more than 60 percent of the vote.

Analysis of 50% Discount from Lowest Unit Charge (LUC) Applied to All Political Candidates Median Station - 1994

Market Range	Gross		Pol. Adv./ Gross Adv.	Gross Adv. Revenues	Total Political		Value of Lost		Total of Lost		# of Stations in Market Range
	Political Adv. Revenues				Advertising with 50% off LUC*		Commerc. Adv. with 50% off LUC**		Gross Adv. with 50% off LUC		
1-10	\$ 1,281,232	\$ 68,484,846	1.9%	\$	852,019	\$	554,845	\$	983,858		128
11-20	\$ 856,063	\$ 39,788,443	2.2%	\$	569,282	\$	370,590	\$	657,371		104
21-30	\$ 758,345	\$ 29,154,177	2.6%	\$	504,299	\$	328,288	\$	582,333		79
31-40	\$ 604,456	\$ 20,185,274	3.0%	\$	401,963	\$	261,669	\$	464,162		73
41-50	\$ 505,875	\$ 14,908,870	3.4%	\$	338,407	\$	218,993	\$	388,461		67
51-60	\$ 584,656	\$ 13,343,242	4.4%	\$	388,796	\$	253,098	\$	448,957		62
61-70	\$ 482,495	\$ 12,839,805	3.6%	\$	307,559	\$	200,214	\$	355,150		82
71-80	\$ 703,714	\$ 11,119,897	6.3%	\$	467,970	\$	304,638	\$	540,382		52
81-90	\$ 413,002	\$ 8,420,161	4.9%	\$	274,646	\$	178,789	\$	317,144		51
91-100	\$ 295,403	\$ 8,054,175	3.7%	\$	198,443	\$	127,880	\$	226,840		45
101-110	\$ 409,655	\$ 6,507,528	6.3%	\$	272,421	\$	177,340	\$	314,574		58
111-120	\$ 324,912	\$ 6,651,909	4.9%	\$	218,066	\$	140,654	\$	249,500		50
121-130	\$ 285,014	\$ 4,616,540	6.4%	\$	198,184	\$	127,712	\$	226,541		50
131-150	\$ 222,885	\$ 4,625,089	4.8%	\$	148,219	\$	98,487	\$	171,153		72
151-175	\$ 222,280	\$ 3,772,813	5.9%	\$	147,816	\$	96,225	\$	170,689		88
176+	\$ 200,817	\$ 3,014,554	6.7%	\$	133,543	\$	86,934	\$	154,207		76
Industrywide											

* Assumes political candidates buy one third more spots.

** Lowest Unit Charge offers approximately a 30% discount from commercial advertisers according to several National sales reps. Therefore 50% off the LUC affords candidates a 62.5% discount from commercial advertisers.

Source: 1995 NAB/BCFM Television Financial Report.

104TH CONGRESS
1ST SESSION

S. 46

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate primary and general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate primary and general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF CAMPAIGN ACT;**

4 **TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Senate Campaign Financing and Spending Reform Act”.

2

1 (b) AMENDMENT OF FECA.—When used in this Act,
 2 the term “FECA” means the Federal Election Campaign
 3 Act of 1971 (2 U.S.C. 431 et seq.).

4 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of Campaign Act; table of contents.

Sec. 2. Findings and declarations of the Senate.

TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING

Subtitle A—Senate Election Campaign Spending Limits and Benefits

Sec. 101. Senate spending limits and benefits.

Sec. 102. Ban on activities of political action committees in Federal elections.

Sec. 103. Reporting requirements.

Sec. 104. Disclosure by noneligible candidates.

Subtitle B—General Provisions

Sec. 131. Broadcast rates and preemption.

Sec. 132. Extension of reduced third-class mailing rates to eligible Senate candidates.

Sec. 133. Reporting requirements for certain independent expenditures.

Sec. 134. Campaign advertising amendments.

Sec. 135. Definitions.

Sec. 136. Provisions relating to franked mass mailings.

TITLE II—INDEPENDENT EXPENDITURES

Sec. 201. Clarification of definitions relating to independent expenditures.

TITLE III—EXPENDITURES

Subtitle A—Personal Loans; Credit

Sec. 301. Personal contributions and loans.

Sec. 302. Extensions of credit.

Subtitle B—Provisions Relating to Soft Money of Political Parties

Sec. 311. Reporting requirements.

TITLE IV—CONTRIBUTIONS

Sec. 401. Contributions through intermediaries and conduits; prohibition on certain contributions by lobbyists.

Sec. 402. Contributions by dependents not of voting age.

Sec. 403. Contributions to candidates from State and local committees of political parties to be aggregated.

Sec. 404. Limited exclusion of advances by campaign workers from the definition of the term “contribution”.

TITLE V—REPORTING REQUIREMENTS

3

- Sec. 501. Change in certain reporting from a calendar year basis to an election cycle basis.
- Sec. 502. Personal and consulting services.
- Sec. 503. Reduction in threshold for reporting of certain information by persons other than political committees.
- Sec. 504. Computerized indices of contributions.

TITLE VI—FEDERAL ELECTION COMMISSION

- Sec. 601. Use of candidates' names.
- Sec. 602. Reporting requirements.
- Sec. 603. Provisions relating to the general counsel of the Commission.
- Sec. 604. Enforcement.
- Sec. 605. Penalties.
- Sec. 606. Random audits.
- Sec. 607. Prohibition of false representation to solicit contributions.
- Sec. 608. Regulations relating to use of non-Federal money.

TITLE VII—MISCELLANEOUS

- Sec. 701. Prohibition of leadership committees.
- Sec. 702. Polling data contributed to candidates.
- Sec. 703. Sense of the Senate that Congress should consider adoption of a joint resolution proposing an amendment to the Constitution that would empower Congress and the States to set reasonable limits on campaign expenditures.
- Sec. 704. Personal use of campaign funds.

TITLE VIII—EFFECTIVE DATES; AUTHORIZATIONS

- Sec. 801. Effective date.
- Sec. 802. Severability.
- Sec. 803. Expedited review of constitutional issues.

1 **SEC. 2. FINDINGS AND DECLARATIONS OF THE SENATE.**

2 (a) **NECESSITY FOR SPENDING LIMITS.**—The Senate
3 finds and declares that—

4 (1) the current system of campaign finance has
5 led to public perceptions that political contributions
6 and their solicitation have unduly influenced the offi-
7 cial conduct of elected officials;

8 (2) permitting candidates for Federal office to
9 raise and spend unlimited amounts of money con-
10 stitutes a fundamental flaw in the current system of

1 campaign finance, and has undermined public re-
2 spect for the Senate as an institution;

3 (3) the failure to limit campaign expenditures
4 has caused individuals elected to the Senate to spend
5 an increasing proportion of their time in office as
6 elected officials raising funds, interfering with the
7 ability of the Senate to carry out its constitutional
8 responsibilities;

9 (4) the failure to limit campaign expenditures
10 has damaged the Senate as an institution, due to the
11 time lost to raising funds for campaigns; and

12 (5) to prevent the appearance of undue influ-
13 ence and to restore public trust in the Senate as an
14 institution, it is necessary to limit campaign expend-
15 itures, through a system which provides public bene-
16 fits to candidates who agree to limit campaign ex-
17 penditures.

18 (b) NECESSITY FOR BAN ON POLITICAL ACTION
19 COMMITTEES.—The Senate finds and declares that—

20 (1) contributions by political action committees
21 to individual candidates have created the perception
22 that candidates are beholden to special interests,
23 and leave candidates open to charges of undue influ-
24 ence;

(2) contributions by political action committees to individual candidates have undermined public confidence in the Senate as an institution; and

(3) to restore public trust in the Senate as an institution, responsive to individuals residing within the respective States, it is necessary to encourage candidates to raise most of their campaign funds from individuals residing within those States.

(c) NECESSITY FOR ATTRIBUTING COOPERATIVE EXPENDITURES TO CANDIDATES.—The Senate finds and declares that—

(1) public confidence and trust in the system of campaign finance would be undermined should any candidate be able to circumvent a system of caps on expenditures through cooperative expenditures with outside individuals, groups, or organizations;

(2) cooperative expenditures by candidates with outside individuals, groups, or organizations would severely undermine the effectiveness of caps on campaign expenditures, unless they are included within such caps; and

(3) to maintain the integrity of the system of campaign finance, expenditures by any individual, group, or organization that have been made in cooperation with any candidate, authorized committee,

1 or agent of any candidate must be attributed to that
2 candidate's cap on campaign expenditures.

3 **TITLE I—CONTROL OF CON-**
4 **GRESSIONAL CAMPAIGN**
5 **SPENDING**

6 **Subtitle A—Senate Election Cam-**
7 **paign Spending Limits and Ben-**
8 **efits**

9 **SEC. 101. SENATE SPENDING LIMITS AND BENEFITS.**

10 (a) **AMENDMENT OF FECA.—**

11 (1) **IN GENERAL.**—FECA is amended by adding
12 at the end the following new title:

13 **“TITLE V—SPENDING LIMITS**
14 **AND BENEFITS FOR SENATE**
15 **ELECTION CAMPAIGNS**

16 **“SEC. 501. CANDIDATES ELIGIBLE TO RECEIVE BENEFITS.**

17 “(a) **IN GENERAL.**—For purposes of this title, a can-
18 didate is an eligible Senate candidate if the candidate—

19 “(1) meets the primary and general election fil-
20 ing requirements of subsections (b) and (c);

21 “(2) meets the primary and runoff election ex-
22 penditure limits of subsection (d); and

23 “(3) meets the threshold contribution require-
24 ments of subsection (e).

1 “(b) PRIMARY FILING REQUIREMENTS.—(1) The re-
2 quirements of this subsection are met if the candidate files
3 with the Secretary of the Senate a declaration that—

4 “(A) the candidate and the candidate’s author-
5 ized committees—

6 “(i)(I) will meet the primary and runoff
7 election expenditure limits of subsection (d);
8 and

9 “(II) will only accept contributions for the
10 primary and runoff elections which do not ex-
11 ceed such limits;

12 “(ii)(I) will meet the primary and runoff
13 election multicandidate political committee con-
14 tribution limits of subsection (f); and

15 “(II) will only accept contributions for the
16 primary and runoff elections from
17 multicandidate political committees which do
18 not exceed such limits; and

19 “(iii) will limit acceptance of contributions
20 during an election cycle from individuals resid-
21 ing outside the candidate’s State and
22 multicandidate political committees, combined,
23 to less than 50 percent of the aggregate amount
24 of contributions accepted from all contributors;

1 “(B) the candidate and the candidate’s author-
2 ized committees will meet the general election ex-
3 penditure limit under section 502(b); and

4 “(C) the candidate and the candidate’s author-
5 ized committees will meet the limitation on expendi-
6 tures from personal funds under section 502(a).

7 “(2) The declaration under paragraph (1) shall be
8 filed not later than the date the candidate files as a can-
9 didate for the primary election.

10 “(c) GENERAL ELECTION FILING REQUIREMENTS.—

11 (1) The requirements of this subsection are met if the can-
12 didate files a certification with the Secretary of the Senate
13 under penalty of perjury that—

14 “(A) the candidate and the candidate’s author-
15 ized committees—

16 “(i)(I) met the primary and runoff election
17 expenditure limits under subsection (d); and

18 “(II) did not accept contributions for the
19 primary or runoff election in excess of the pri-
20 mary or runoff expenditure limit under sub-
21 section (d), whichever is applicable, reduced by
22 any amounts transferred to this election cycle
23 from a preceding election cycle; and

1 “(ii)(I) met the multicandidate political
2 committee contribution limits under subsection
3 (f);

4 “(II) did not accept contributions for the
5 primary or runoff election in excess of the
6 multicandidate political committee contribution
7 limits under subsection (f); and

8 “(iii) will limit acceptance of contributions
9 during an election cycle from individuals resid-
10 ing outside the candidate’s State and
11 multicandidate political committees, combined,
12 to less than 50 percent of the aggregate amount
13 of contributions accepted from all contributors;

14 “(B) the candidate met the threshold contribu-
15 tion requirement under subsection (e), and that only
16 allowable contributions were taken into account in
17 meeting such requirement;

18 “(C) at least one other candidate has qualified
19 for the same general election ballot under the law of
20 the State involved;

21 “(D) such candidate and the authorized com-
22 mittees of such candidate—

23 “(i) except as otherwise provided by this
24 title, will not make expenditures which exceed

1 the general election expenditure limit under sec-
2 tion 502(b);

3 “(ii) will not accept any contributions in
4 violation of section 315;

5 “(iii) except as otherwise provided by this
6 title, will not accept any contribution for the
7 general election involved to the extent that such
8 contribution would cause the aggregate amount
9 of such contributions to exceed the sum of the
10 amount of the general election expenditure limit
11 under section 502(b) and the amount described
12 in section 502(c), reduced by any amounts
13 transferred to the current election cycle from a
14 previous election cycle and not taken into ac-
15 count under subparagraph (A)(ii);

16 “(iv) will deposit all payments received
17 under this title in an account insured by the
18 Federal Deposit Insurance Corporation from
19 which funds may be withdrawn by check or
20 similar means of payment to third parties;

21 “(v) will furnish campaign records, evi-
22 dence of contributions, and other appropriate
23 information to the Commission; and

1 “(vi) will cooperate in the case of any audit
2 and examination by the Commission under sec-
3 tion 506; and

4 “(E) the candidate intends to make use of the
5 benefits provided under section 503.

6 “(2) The declaration under paragraph (1) shall be
7 filed not later than 7 days after the earlier of—

8 “(A) the date the candidate qualifies for the
9 general election ballot under State law; or

10 “(B) if, under State law, a primary or runoff
11 election to qualify for the general election ballot oc-
12 curs after September 1, the date the candidate wins
13 the primary or runoff election.

14 “(d) PRIMARY AND RUNOFF EXPENDITURE LIM-
15 ITS.—(1) The requirements of this subsection are met if:

16 “(A) The candidate or the candidate’s author-
17 ized committees did not make expenditures for the
18 primary election in excess of the lesser of—

19 “(i) 67 percent of the general election ex-
20 penditure limit under section 502(b); or

21 “(ii) \$2,750,000.

22 “(B) The candidate and the candidate’s author-
23 ized committees did not make expenditures for any
24 runoff election in excess of 20 percent of the general
25 election expenditure limit under section 502(b).

1 “(2) The limitations under subparagraphs (A) and
2 (B) of paragraph (1) with respect to any candidate shall
3 be increased by the aggregate amount of independent ex-
4 penditures in opposition to, or on behalf of any opponent
5 of, such candidate during the primary or runoff election
6 period, whichever is applicable, which are required to be
7 reported to the Secretary of the Senate with respect to
8 such period under section 304(c).

9 “(3)(A) If the contributions received by the candidate
10 or the candidate’s authorized committees for the primary
11 election or runoff election exceed the expenditures for ei-
12 ther such election, such excess contributions shall be treat-
13 ed as contributions for the general election and expendi-
14 tures for the general election may be made from such ex-
15 cess contributions.

16 “(B) Subparagraph (A) shall not apply to the extent
17 that such treatment of excess contributions—

18 “(i) would result in the violation of any limita-
19 tion under section 315; or

20 “(ii) would cause the aggregate contributions
21 received for the general election to exceed the limits
22 under subsection (c)(1)(D)(iii).

23 “(e) THRESHOLD CONTRIBUTION REQUIREMENTS.—
24 (1) The requirements of this subsection are met if the can-
25 didate and the candidate’s authorized committees have re-

1 ceived allowable contributions during the applicable period
2 in an amount at least equal to the lesser of—

3 “(A) 10 percent of the general election expendi-
4 ture limit under section 502(b); or

5 “(B) \$250,000.

6 “(2) For purposes of this section and section
7 503(b)—

8 “(A) The term ‘allowable contributions’ means
9 contributions which are made as gifts of money by
10 an individual pursuant to a written instrument iden-
11 tifying such individual as the contributor.

12 “(B) The term ‘allowable contributions’ shall
13 not include—

14 “(i) contributions made directly or indi-
15 rectly through an intermediary or conduit which
16 are treated as made by such intermediary or
17 conduit under section 315(a)(8)(B);

18 “(ii) contributions from any individual dur-
19 ing the applicable period to the extent such con-
20 tributions exceed \$250; or

21 “(iii) contributions from individuals resid-
22 ing outside the candidate’s State to the extent
23 such contributions exceed 50 percent of the ag-
24 gregate allowable contributions (without regard

1 to this clause) received by the candidate during
2 the applicable period.

3 Clauses (ii) and (iii) shall not apply for purposes of
4 section 503(b).

5 “(3) For purposes of this subsection and section
6 503(b), the term ‘applicable period’ means—

7 “(A) the period beginning on January 1 of the
8 calendar year preceding the calendar year of the
9 general election involved and ending on—

10 “(i) the date on which the certification
11 under subsection (c) is filed by the candidate;
12 or

13 “(ii) for purposes of section 503(b), the
14 date of such general election; or

15 “(B) in the case of a special election for the of-
16 fice of United States Senator, the period beginning
17 on the date the vacancy in such office occurs and
18 ending on the date of the general election involved.

19 “(f) MULTICANDIDATE POLITICAL COMMITTEE CON-
20 TRIBUTION LIMITS.—The requirements of this subsection
21 are met if the candidate and the candidate’s authorized
22 committees have accepted from multicandidate political
23 committees contributions that do not exceed—

24 “(1) during any period in which the limitation
25 under section 323 is in effect, zero dollars; and

1 “(2) during any other period—

2 “(A) during the primary election period, an
3 amount equal to 20 percent of the primary elec-
4 tion spending limit under subsection (d)(1)(A);
5 and

6 “(B) during the runoff election period, an
7 amount equal to 20 percent of the runoff elec-
8 tion spending limit under subsection (d)(1)(B).

9 “(g) INDEXING.—The \$2,750,000 amount under sub-
10 section (d)(1) shall be increased as of the beginning of
11 each calendar year beginning with calendar year 1998,
12 based on the increase in the price index determined under
13 section 315(c), except that, for purposes of subsection
14 (d)(1), the base period shall be calendar year 1992.

15 **“SEC. 502. LIMITATIONS ON EXPENDITURES.**

16 “(a) LIMITATION ON USE OF PERSONAL FUNDS.—

17 (1) The aggregate amount of expenditures which may be
18 made during an election cycle by an eligible Senate can-
19 didate or such candidate’s authorized committees from the
20 sources described in paragraph (2) shall not exceed
21 \$25,000.

22 “(2) A source is described in this paragraph if it is—

23 “(A) personal funds of the candidate and mem-
24 bers of the candidate’s immediate family; or

1 “(B) personal debt incurred by the candidate
2 and members of the candidate’s immediate family.

3 “(b) GENERAL ELECTION EXPENDITURE LIMIT.—

4 (1) Except as otherwise provided in this title, the aggre-
5 gate amount of expenditures for a general election by an
6 eligible Senate candidate and the candidate’s authorized
7 committees shall not exceed the lesser of—

8 “(A) \$5,500,000; or

9 “(B) the greater of—

10 “(i) \$950,000; or

11 “(ii) \$400,000; plus

12 “(I) 30 cents multiplied by the voting
13 age population not in excess of 4,000,000;
14 and

15 “(II) 25 cents multiplied by the voting
16 age population in excess of 4,000,000.

17 “(2) In the case of an eligible Senate candidate in
18 a State which has no more than 1 transmitter for a com-
19 mercial Very High Frequency (VHF) television station li-
20 censed to operate in that State, paragraph (1)(B)(ii) shall
21 be applied by substituting—

22 “(A) ‘80 cents’ for ‘30 cents’ in subclause (I);
23 and

24 “(B) ‘70 cents’ for ‘25 cents’ in subclause (II).

1 “(3) The amount otherwise determined under para-
2 graph (1) for any calendar year shall be increased by the
3 same percentage as the percentage increase for such cal-
4 endar year under section 501(f) (relating to indexing).

5 “(c) PAYMENT OF TAXES.—The limitation under
6 subsection (b) shall not apply to any expenditure for Fed-
7 eral, State, or local taxes with respect to a candidate’s au-
8 thorized committees.

9 “(d) EXPENDITURES.—For purposes of this title, the
10 term ‘expenditure’ has the meaning given such term by
11 section 301(9), except that in determining any expendi-
12 tures made by, or on behalf of, a candidate or a can-
13 didate’s authorized committees, section 301(9)(B) shall be
14 applied without regard to clause (ii) or (vi) thereof.

15 **“SEC. 503. BENEFITS ELIGIBLE CANDIDATE ENTITLED TO**
16 **RECEIVE.**

17 “(a) IN GENERAL.—An eligible Senate candidate
18 shall be entitled to—

19 “(1) the broadcast media rates provided under
20 section 315(b) of the Communications Act of 1934;

21 “(2) the mailing rates provided in section
22 3626(e) of title 39, United States Code; and

23 “(3) payments in the amounts determined
24 under subsection (b).

1 “(b) AMOUNT OF PAYMENTS.—(1) For purposes of
2 subsection (a)(3), the amounts determined under this sub-
3 section are—

4 “(A) the public financing amount;

5 “(B) the independent expenditure amount; and

6 “(C) in the case of an eligible Senate candidate
7 who has an opponent in the general election who re-
8 ceives contributions, or makes (or obligates to make)
9 expenditures, for such election in excess of the gen-
10 eral election expenditure limit under section 502(b),
11 the excess expenditure amount.

12 “(2) For purposes of paragraph (1), the public fi-
13 nancing amount is—

14 “(A) in the case of an eligible candidate who is
15 a major party candidate and who has met the
16 threshold requirement of section 501(e)—

17 “(i) during the primary election period, an
18 amount equal to 100 percent of the amount of
19 contributions received during that period from
20 individuals residing in the candidate’s State in
21 the aggregate amount of \$100 or less plus an
22 amount equal to 50 percent of the amount of
23 contributions received during that period from
24 individuals residing in the candidate’s State in
25 the aggregate amount of more than \$100 but

1 less than \$251, up to 50 percent of the primary
2 election spending limit under section
3 501(d)(1)(A), reduced by the threshold require-
4 ment under section 501(e);

5 (ii) during the runoff election period, an
6 amount equal to 100 percent of the amount of
7 contributions received during that period from
8 individuals residing in the candidate's State in
9 the aggregate amount of \$100 or less plus an
10 amount equal to 50 percent of the amount of
11 contributions received during that period from
12 individuals residing in the candidate's State in
13 the aggregate amount of more than \$100 but
14 less than \$251, up to 10 percent of the general
15 election spending limit under section
16 501(d)(1)(B); and

17 "(iii) during the general election period, an
18 amount equal to the general election expendi-
19 ture limit applicable to the candidate under sec-
20 tion 502(b) (without regard to paragraph (4)
21 thereof); and

22 "(B) in the case of an eligible candidate who is
23 not a major party candidate and who has met the
24 threshold requirement of section 501(e)—

1 “(i) during the primary election period, an
2 amount equal to 100 percent of the amount of
3 contributions received during that period from
4 individuals residing in the candidate’s State in
5 the aggregate amount of \$100 or less plus an
6 amount equal to 50 percent of the amount of
7 contributions received during that period from
8 individuals residing in the candidate’s State in
9 the aggregate amount of more than \$100 but
10 less than \$251, up to 50 percent of the primary
11 election spending limit under section
12 501(d)(1)(A), reduced by the threshold require-
13 ment under section 501(e);

14 (ii) during the runoff election period, an
15 amount equal to 100 percent of the amount of
16 contributions received during that period from
17 individuals residing in the candidate’s State in
18 the aggregate amount of \$100 or less plus an
19 amount equal to 50 percent of the amount of
20 contributions received during that period from
21 individuals residing in the candidate’s State in
22 the aggregate amount of more than \$100 but
23 less than \$251, up to 10 percent of the general
24 election spending limit under section
25 501(d)(1)(B); and

(iii) during the runoff election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of \$100 or less plus an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than \$100 but less than \$251, up to 50 percent of the general election spending limit under section 502(b).

“(3) For purposes of paragraph (1), the independent expenditure amount is the total amount of independent expenditures made, or obligated to be made, during the general election period by 1 or more persons in opposition to, or on behalf of an opponent of, an eligible Senate candidate which are required to be reported by such persons under section 304(c) with respect to the general election period and are certified by the Commission under section 304(c).

“(4) For purposes of paragraph (1), the excess expenditure amount is the amount determined as follows:

“(A) In the case of a major party candidate, an amount equal to the sum of—

1 “(i) if the excess described in paragraph
2 (1)(C) is not greater than $133\frac{1}{3}$ percent of the
3 general election expenditure limit under section
4 502(b), an amount equal to one-third of such
5 limit applicable to the eligible Senate candidate
6 for the election; plus

7 “(ii) if such excess equals or exceeds $133\frac{1}{3}$
8 percent but is less than $166\frac{2}{3}$ percent of such
9 limit, an amount equal to one-third of such
10 limit; plus

11 “(iii) if such excess equals or exceeds
12 $166\frac{2}{3}$ percent of such limit, an amount equal
13 to one-third of such limit.

14 “(B) In the case of an eligible Senate candidate
15 who is not a major party candidate, an amount
16 equal to the least of the following:

17 “(i) The allowable contributions of the eli-
18 gible Senate candidate during the applicable pe-
19 riod in excess of the threshold contribution re-
20 quirement under section 501(e).

21 “(ii) 50 percent of the general election ex-
22 penditure limit applicable to the eligible Senate
23 candidate under section 502(b).

24 “(iii) The excess described in paragraph
25 (1).

1 “(c) WAIVER OF EXPENDITURE AND CONTRIBUTION

2 LIMITS.—(1) An eligible Senate candidate who receives
3 payments under subsection (a)(3) which are allocable to
4 the independent expenditure or excess expenditure
5 amounts described in paragraphs (3) and (4) of subsection
6 (b) may make expenditures from such payments to defray
7 expenditures for the general election without regard to the
8 general election expenditure limit under section 502(b).

9 “(2)(A) An eligible Senate candidate who receives
10 benefits under this section may make expenditures for the
11 general election without regard to clause (i) of section
12 501(c)(1)(D) or subsection (a) or (b) of section 502 if any
13 one of the eligible Senate candidate’s opponents who is
14 not an eligible Senate candidate either raises aggregate
15 contributions, or makes or becomes obligated to make ag-
16 gregate expenditures, for the general election that exceed
17 200 percent of the general election expenditure limit appli-
18 cable to the eligible Senate candidate under section
19 502(b).

20 “(B) The amount of the expenditures which may be
21 made by reason of subparagraph (A) shall not exceed 100
22 percent of the general election expenditure limit under sec-
23 tion 502(b).

1 “(3)(A) A candidate who receives benefits under this
2 section may receive contributions for the general election
3 without regard to clause (iii) of section 501(c)(1)(D) if—

4 “(i) a major party candidate in the same gen-
5 eral election is not an eligible Senate candidate; or

6 “(ii) any other candidate in the same general
7 election who is not an eligible Senate candidate
8 raises aggregate contributions, or makes or becomes
9 obligated to make aggregate expenditures, for the
10 general election that exceed 75 percent of the gen-
11 eral election expenditure limit applicable to such
12 other candidate under section 502(b).

13 “(B) The amount of contributions which may be re-
14 ceived by reason of subparagraph (A) shall not exceed 100
15 percent of the general election expenditure limit under sec-
16 tion 502(b).

17 “(d) USE OF PAYMENTS.—Payments received by a
18 candidate under subsection (a)(3) shall be used to defray
19 expenditures incurred with respect to the general election
20 period for the candidate. Such payments shall not be
21 used—

22 “(1) except as provided in paragraph (4), to
23 make any payments, directly or indirectly, to such
24 candidate or to any member of the immediate family
25 of such candidate;

1 “(2) to make any expenditure other than ex-
2 penditures to further the general election of such
3 candidate;

4 “(3) to make any expenditures which constitute
5 a violation of any law of the United States or of the
6 State in which the expenditure is made; or

7 “(4) subject to the provisions of section 315(k),
8 to repay any loan to any person except to the extent
9 the proceeds of such loan were used to further the
10 general election of such candidate.

11 **“SEC. 504. CERTIFICATION BY COMMISSION.**

12 “(a) IN GENERAL.—(1) The Commission shall certify
13 to any candidate meeting the requirements of section 501
14 that such candidate is an eligible Senate candidate entitled
15 to benefits under this title. The Commission shall revoke
16 such certification if it determines a candidate fails to con-
17 tinue to meet such requirements.

18 “(2) No later than 48 hours after an eligible Senate
19 candidate files a request with the Secretary of the Senate
20 to receive benefits under section 501, the Commission
21 shall issue a certification stating whether such candidate
22 is eligible for payments under this title and the amount
23 of such payments to which such candidate is entitled. The
24 request referred to in the preceding sentence shall con-
25 tain—

1 “(A) such information and be made in accord-
2 ance with such procedures as the Commission may
3 provide by regulation; and

10 “(b) DETERMINATIONS BY COMMISSION.—All deter-
11 minations (including certifications under subsection (a))
12 made by the Commission under this title shall be final and
13 conclusive, except to the extent that they are subject to
14 examination and audit by the Commission under section
15 505 and judicial review under section 506.

18 “(a) EXAMINATION AND AUDITS.—(1) After each
19 general election, the Commission shall conduct an exam-
20 ination and audit of the campaign accounts of 10 percent
21 of all candidates for the office of United States Senator
22 to determine, among other things, whether such can-
23 didates have complied with the expenditure limits and con-
24 ditions of eligibility of this title, and other requirements
25 of this Act. Such candidates shall be designated by the

1 Commission through the use of an appropriate statistical
2 method of random selection. If the Commission selects a
3 candidate, the Commission shall examine and audit the
4 campaign accounts of all other candidates in the general
5 election for the office the selected candidate is seeking.

6 “(2) The Commission may conduct an examination
7 and audit of the campaign accounts of any candidate in
8 a general election for the office of United States Senator
9 if the Commission determines that there exists reason to
10 believe that such candidate may have violated any provi-
11 sion of this title.

12 “(b) EXCESS PAYMENTS; REVOCATION OF STA-
13 TUS.—(1) If the Commission determines that payments
14 were made to an eligible Senate candidate under this title
15 in excess of the aggregate amounts to which such can-
16 didate was entitled, the Commission shall so notify such
17 candidate, and such candidate shall pay an amount equal
18 to the excess.

19 “(2) If the Commission revokes the certification of
20 a candidate as an eligible Senate candidate under section
21 504(a)(1), the Commission shall notify the candidate, and
22 the candidate shall pay an amount equal to the payments
23 received under this title.

24 “(c) MISUSE OF BENEFITS.—If the Commission de-
25 termines that any amount of any benefit made available

1 to an eligible Senate candidate under this title was not
2 used as provided for in this title, the Commission shall
3 so notify such candidate and such candidate shall pay the
4 amount of such benefit.

5 “(d) EXCESS EXPENDITURES.—If the Commission
6 determines that any eligible Senate candidate who has re-
7 ceived benefits under this title has made expenditures
8 which in the aggregate exceed—

9 “(1) the primary or runoff expenditure limit
10 under section 501(d); or

11 “(2) the general election expenditure limit
12 under section 502(b),

13 the Commission shall so notify such candidate and such
14 candidate shall pay an amount equal to the amount of the
15 excess expenditures.

16 “(e) CIVIL PENALTIES FOR EXCESS EXPENDITURES
17 AND CONTRIBUTIONS.—(1) If the Commission determines
18 that a candidate has committed a violation described in
19 subsection (c), the Commission may assess a civil penalty
20 against such candidate in an amount not greater than 200
21 percent of the amount involved.

22 “(2)(A) LOW AMOUNT OF EXCESS EXPENDI-
23 TURES.—Any eligible Senate candidate who makes ex-
24 penditures that exceed any limitation described in para-
25 graph (1) or (2) of subsection (d) by 2.5 percent or less

1 shall pay an amount equal to the amount of the excess
2 expenditures.

3 “(B) MEDIUM AMOUNT OF EXCESS EXPENDI-
4 TURES.—Any eligible Senate candidate who makes ex-
5 penditures that exceed any limitation described in para-
6 graph (1) or (2) of subsection (d) by more than 2.5 per-
7 cent and less than 5 percent shall pay an amount equal
8 to three times the amount of the excess expenditures.

9 “(C) LARGE AMOUNT OF EXCESS EXPENDITURES.—
10 Any eligible Senate candidate who makes expenditures
11 that exceed any limitation described in paragraph (1) or
12 (2) of subsection (d) by 5 percent or more shall pay an
13 amount equal to three times the amount of the excess ex-
14 penditures plus a civil penalty in an amount determined
15 by the Commission.

16 “(f) UNEXPENDED FUNDS.—Any amount received by
17 an eligible Senate candidate under this title may be re-
18 tained for a period not exceeding 120 days after the date
19 of the general election for the liquidation of all obligations
20 to pay expenditures for the general election incurred dur-
21 ing the general election period. At the end of such 120-
22 day period, any unexpended funds received under this title
23 shall be promptly repaid.

24 “(g) LIMIT ON PERIOD FOR NOTIFICATION.—No no-
25 tification shall be made by the Commission under this sec-

1 tion with respect to an election more than three years after
2 the date of such election.

3 “(h) DEPOSITS.—The Secretary shall deposit all pay-
4 ments received under this section into the Senate Election
5 Campaign Fund.

6 **“SEC. 506. JUDICIAL REVIEW.**

7 “(a) JUDICIAL REVIEW.—Any agency action by the
8 Commission made under the provisions of this title shall
9 be subject to review by the United States Court of Appeals
10 for the District of Columbia Circuit upon petition filed in
11 such court within thirty days after the agency action by
12 the Commission for which review is sought. It shall be the
13 duty of the Court of Appeals, ahead of all matters not
14 filed under this title, to advance on the docket and expedi-
15 tiously take action on all petitions filed pursuant to this
16 title.

17 “(b) APPLICATION OF TITLE 5.—The provisions of
18 chapter 7 of title 5, United States Code, shall apply to
19 judicial review of any agency action by the Commission.

20 “(c) AGENCY ACTION.—For purposes of this section,
21 the term ‘agency action’ has the meaning given such term
22 by section 551(13) of title 5, United States Code.

1 **"SEC. 507. PARTICIPATION BY COMMISSION IN JUDICIAL**
2 **PROCEEDINGS.**

3 “(a) APPEARANCES.—The Commission is authorized
4 to appear in and defend against any action instituted
5 under this section and under section 506 either by attor-
6 neys employed in its office or by counsel whom it may ap-
7 point without regard to the provisions of title 5, United
8 States Code, governing appointments in the competitive
9 service, and whose compensation it may fix without regard
10 to the provisions of chapter 51 and subchapter III of chap-
11 ter 53 of such title.

12 “(b) INSTITUTION OF ACTIONS.—The Commission is
13 authorized, through attorneys and counsel described in
14 subsection (a), to institute actions in the district courts
15 of the United States to seek recovery of any amounts de-
16 termined under this title to be payable to the Secretary.

17 “(c) INJUNCTIVE RELIEF.—The Commission is au-
18 thorized, through attorneys and counsel described in sub-
19 section (a), to petition the courts of the United States for
20 such injunctive relief as is appropriate in order to imple-
21 ment any provision of this title.

22 “(d) APPEALS.—The Commission is authorized on
23 behalf of the United States to appeal from, and to petition
24 the Supreme Court for certiorari to review, judgments or
25 decrees entered with respect to actions in which it appears
26 pursuant to the authority provided in this section.

1 **"SEC. 508. REPORTS TO CONGRESS; REGULATIONS.**

2 “(a) **REPORTS.**—The Commission shall, as soon as
3 practicable after each election, submit a full report to the
4 Senate setting forth—

5 “(1) the expenditures (shown in such detail as
6 the Commission determines appropriate) made by
7 each eligible Senate candidate and the authorized
8 committees of such candidate;

9 “(2) the amounts certified by the Commission
10 under section 504 as benefits available to each eligi-
11 ble Senate candidate;

12 “(3) the amount of repayments, if any, required
13 under section 505 and the reasons for each repay-
14 ment required; and

15 “(4) the balance in the Senate Election Cam-
16 paign Fund, and the balance in any account main-
17 tained by the Fund.

18 Each report submitted pursuant to this section shall be
19 printed as a Senate document.

20 “(b) **RULES AND REGULATIONS.**—The Commission
21 is authorized to prescribe such rules and regulations, in
22 accordance with the provisions of subsection (c), to con-
23 duct such examinations and investigations, and to require
24 the keeping and submission of such books, records, and
25 information, as it deems necessary to carry out the func-
26 tions and duties imposed on it by this title.

1 “(c) STATEMENT TO SENATE.—Thirty days before
2 prescribing any rules or regulation under subsection (b),
3 the Commission shall transmit to the Senate a statement
4 setting forth the proposed rule or regulation and contain-
5 ing a detailed explanation and justification of such rule
6 or regulation.

7 **“SEC. 509. PAYMENTS RELATING TO ELIGIBLE CAN-**
8 **DIDATES.**

9 “(a) ESTABLISHMENT OF CAMPAIGN FUND.—(1)
10 There is established on the books of the Treasury of the
11 United States a special fund to be known as the ‘Senate
12 Election Campaign Fund’.

13 “(2)(A) There are appropriated to the Fund for each
14 fiscal year, out of amounts in the general fund of the
15 Treasury not otherwise appropriated, amounts equal to—

16 “(i) any contributions by persons which are spe-
17 cifically designated as being made to the Fund;

18 “(ii) amounts collected under section 505(h);
19 and

20 “(iii) any other amounts that may be appro-
21 priated to or deposited into the Fund under this
22 title.

23 “(B) The Secretary of the Treasury shall, from time
24 to time, transfer to the Fund an amount not in excess
25 of the amounts described in subparagraph (A).

1 “(C) Amounts in the Fund shall remain available
2 without fiscal year limitation.

3 “(3) Amounts in the Fund shall be available only for
4 the purposes of—

5 “(A) making payments required under this title;
6 and

7 “(B) making expenditures in connection with
8 the administration of the Fund.

9 “(4) The Secretary shall maintain such accounts in
10 the Fund as may be required by this title or which the
11 Secretary determines to be necessary to carry out the pro-
12 visions of this title.

13 “(b) PAYMENTS UPON CERTIFICATION.—Upon re-
14 ceipt of a certification from the Commission under section
15 504, except as provided in subsection (d), the Secretary
16 shall promptly pay the amount certified by the Commis-
17 sion to the candidate out of the Senate Election Campaign
18 Fund.

19 “(c) REDUCTIONS IN PAYMENTS IF FUNDS INSUFFI-
20 CIENT.—(1) If, at the time of a certification by the Com-
21 mission under section 504 for payment to an eligible can-
22 didate, the Secretary determines that the monies in the
23 Senate Election Campaign Fund are not, or may not be,
24 sufficient to satisfy the full entitlement of all eligible can-
25 didates, the Secretary shall withhold from the amount of

1 such payment such amount as the Secretary determines
2 to be necessary to assure that each eligible candidate will
3 receive the same pro rata share of such candidate's full
4 entitlement.

5 “(2) Amounts withheld under subparagraph (A) shall
6 be paid when the Secretary determines that there are suf-
7 ficient monies in the Fund to pay all, or a portion thereof,
8 to all eligible candidates from whom amounts have been
9 withheld, except that if only a portion is to be paid, it
10 shall be paid in such manner that each eligible candidate
11 receives an equal pro rata share of such portion.

12 “(3)(A) Not later than December 31 of any calendar
13 year preceding a calendar year in which there is a regu-
14 larly scheduled general election, the Secretary, after con-
15 sultation with the Commission, shall make an estimate
16 of—

17 “(i) the amount of monies in the fund which
18 will be available to make payments required by this
19 title in the succeeding calendar year; and

20 “(ii) the amount of payments which will be re-
21 quired under this title in such calendar year.

22 “(B) If the Secretary determines that there will be
23 insufficient monies in the fund to make the payments re-
24 quired by this title for any calendar year, the Secretary
25 shall notify each candidate on January 1 of such calendar

1 year (or, if later, the date on which an individual becomes
2 a candidate) of the amount which the Secretary estimates
3 will be the pro rata reduction in each eligible candidate's
4 payments under this subsection. Such notice shall be by
5 registered mail.

6 “(C) The amount of the eligible candidate's contribu-
7 tion limit under section 501(c)(1)(D)(iii) shall be in-
8 creased by the amount of the estimated pro rata reduction.

9 “(4) The Secretary shall notify the Commission and
10 each eligible candidate by registered mail of any actual
11 reduction in the amount of any payment by reason of this
12 subsection. If the amount of the reduction exceeds the
13 amount estimated under paragraph (3), the candidate's
14 contribution limit under section 501(c)(1)(D)(iii) shall be
15 increased by the amount of such excess.”

16 (2) EFFECTIVE DATES.—(A) Except as pro-
17 vided in this paragraph, the amendment made by
18 paragraph (1) shall apply to elections occurring after
19 December 31, 1995.

20 (B) For purposes of any expenditure or con-
21 tribution limit imposed by the amendment made by
22 paragraph (1)—

23 (i) no expenditure made before January 1,
24 1996, shall be taken into account, except that
25 there shall be taken into account any such ex-

penditure for goods or services to be provided after such date; and

(ii) all cash, cash items, and Government securities on hand as of January 1, 1996, shall be taken into account in determining whether the contribution limit is met, except that there shall not be taken into account amounts used during the 60-day period beginning on January 1, 1996, to pay for expenditures which were incurred (but unpaid) before such date.

(3) EFFECT OF INVALIDITY ON OTHER PROVISIONS OF ACT.—If section 501, 502, or 503 of title V of FECA (as added by this section), or any part thereof, is held to be invalid, all provisions of, and amendments made by, this Act shall be treated as invalid.

(b) PROVISIONS TO FACILITATE VOLUNTARY CONTRIBUTIONS TO SENATE ELECTION CAMPAIGN FUND.—

(1) GENERAL RULE.—Part VIII of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following:

“Subpart B—Designation of Additional Amounts to Senate Election Campaign Fund

“Sec. 6097. Designation of additional amounts.

1 **"SEC. 6097. DESIGNATION OF ADDITIONAL AMOUNTS.**

2 “(a) GENERAL RULE.—Every individual (other than
3 a nonresident alien) who files an income tax return for
4 any taxable year may designate an additional amount
5 equal to \$5 (\$10 in the case of a joint return) to be paid
6 over to the Senate Election Campaign Fund.

7 “(b) MANNER AND TIME OF DESIGNATION.—A des-
8 ignation under subsection (a) may be made for any taxable
9 year only at the time of filing the income tax return for
10 the taxable year. Such designation shall be made on the
11 page bearing the taxpayer's signature.

12 “(c) TREATMENT OF ADDITIONAL AMOUNTS.—Any
13 additional amount designated under subsection (a) for any
14 taxable year shall, for all purposes of law, be treated as
15 an additional income tax imposed by chapter 1 for such
16 taxable year.

17 “(d) INCOME TAX RETURN.—For purposes of this
18 section, the term ‘income tax return’ means the return of
19 the tax imposed by chapter 1.”.

20 (2) CONFORMING AMENDMENTS.—(A) Part
21 VIII of subchapter A of chapter 61 of such Code is
22 amended by striking the heading and inserting:

23 **“PART VIII—DESIGNATION OF AMOUNTS TO**
24 **ELECTION CAMPAIGN FUNDS**

 “Subpart A. Presidential Election Campaign Fund.

 “Subpart B. Designation of additional amounts to Senate Elec-
 tion Campaign Fund.

1 **“Subpart A—Presidential Election Campaign Fund”.**

2 (B) The table of parts for subchapter A of
3 chapter 61 of such Code is amended by striking the
4 item relating to part VIII and inserting:

“Part VIII. Designation of amounts to election campaign funds.”

5 (3) **EFFECTIVE DATE.**—The amendments made
6 by this section shall apply to taxable years beginning
7 after December 31, 1995.

8 **SEC. 102. BAN ON ACTIVITIES OF POLITICAL ACTION COM-**
9 **MITTEES IN FEDERAL ELECTIONS.**

10 (a) **IN GENERAL.**—Title III of FECA (2 U.S.C. 431
11 et seq.), is amended by adding at the end thereof the fol-
12 lowing new section:

13 **“BAN ON FEDERAL ELECTION ACTIVITIES BY POLITICAL**
14 **ACTION COMMITTEES**

15 **“SEC. 323. (a)** Notwithstanding any other provision
16 of this Act, no person other than an individual or a politi-
17 cal committee may make contributions, solicit or receive
18 contributions, or make expenditures for the purpose of in-
19 fluencing an election for Federal office.

20 **“(b)** In the case of individuals who are executive or
21 administrative personnel of an employer—

22 **“(1)** no contributions may be made by such in-
23 dividuals—

24 **“(A)** to any political committees estab-
25 lished and maintained by any political party; or

1 “(B) to any candidate for nomination for
2 election, or election, to Federal office or the
3 candidate’s authorized committees,
4 unless such contributions are not being made at the
5 direction of, or otherwise controlled or influenced by,
6 the employer; and

7 “(2) the aggregate amount of such contribu-
8 tions by all such individuals in any calendar year
9 shall not exceed—

10 “(A) \$20,000 in the case of such political
11 committees; and

12 “(B) \$5,000 in the case of any such can-
13 didate and the candidate’s authorized commit-
14 tees.”.

15 (b) DEFINITION OF POLITICAL COMMITTEE.—(1)
16 Paragraph (4) of section 301 of FECA (2 U.S.C. 431(4))
17 is amended to read as follows:

18 “(4) The term ‘political committee’ means—

19 “(A) the principal campaign committee of
20 a candidate;

21 “(B) any national, State, or district com-
22 mittee of a political party, including any subor-
23 dinate committee thereof; and

24 “(C) any local committee of a political
25 party which—

1 “(i) receives contributions aggregating
2 in excess of \$5,000 during a calendar year;

3 “(ii) makes payments exempted from
4 the definition of contribution or expendi-
5 ture under paragraph (8) or (9) aggregat-
6 ing in excess of \$5,000 during a calendar
7 year;

8 “(iii) makes contributions or expendi-
9 tures aggregating in excess of \$1,000 dur-
10 ing a calendar year; or

11 “(D) any committee described in section
12 315(a)(8)(D)(i)(III).”.

13 (2) Section 316(b)(2) of FECA (2 U.S.C.
14 441b(b)(2)) is amended by striking subparagraph (C).

15 (c) CANDIDATE’S COMMITTEES.—(1) Section 315(a)
16 of FECA (2 U.S.C. 441a(a)) is amended by adding at the
17 end thereof the following new paragraph:

18 “(9) For the purposes of the limitations provided by
19 paragraphs (1) and (2), any political committee which is
20 established or financed or maintained or controlled by any
21 candidate or Federal officeholder shall be deemed to be
22 an authorized committee of such candidate or officeholder.
23 Nothing in this paragraph shall be construed to permit
24 the establishment, financing, maintenance, or control of

1 any committee which is prohibited by paragraph (3) or
2 (6) of section 302(e).”.

3 (2) Section 302(e)(3) of FECA (2 U.S.C. 432) is
4 amended to read as follows:

5 “(3) No political committee that supports or has sup-
6 ported more than one candidate may be designated as an
7 authorized committee, except that—

8 “(A) a candidate for the office of President
9 nominated by a political party may designate the na-
10 tional committee of such political party as the can-
11 didate’s principal campaign committee, but only if
12 that national committee maintains separate books of
13 account with respect to its functions as a principal
14 campaign committee; and

15 “(B) a candidate may designate a political com-
16 mittee established solely for the purpose of joint
17 fundraising by such candidates as an authorized
18 committee.”.

19 (d) RULES APPLICABLE WHEN BAN NOT IN EF-
20 FECT.—For purposes of the Federal Election Campaign
21 Act of 1971, during any period beginning after the effec-
22 tive date in which the limitation under section 323 of such
23 Act (as added by subsection (a)) is not in effect—

24 (1) the amendments made by subsections (a),
25 (b), and (c) shall not be in effect;

(2) in the case of a candidate for election, or nomination for election, to Federal office (and such candidate's authorized committees), section 315(a)(2)(A) of FECA (2 U.S.C. 441a(a)(2)(A)) shall be applied by substituting "\$1,000" for "\$5,000";

(3) it shall be unlawful for a multicandidate political committee to make a contribution to a candidate for election, or nomination for election, to Federal office (or an authorized committee) to the extent that the making or accepting of the contribution will cause the amount of contributions received by the candidate and the candidate's authorized committees from multicandidate political committees to exceed the lesser of—

(A) \$825,000; or

(B) 20 percent of the aggregate Federal election spending limits applicable to the candidate for the election cycle.

The \$825,000 amount in paragraph (3) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c) of FECA, except that for purposes of paragraph (3), the base period shall be the calendar year 1996. A candidate or authorized com-

1 mittee that receives a contribution from a
2 multicandidate political committee in excess of the
3 amount allowed under paragraph (3) shall return
4 the amount of such excess contribution to the con-
5 tributor.

6 (e) RULE ENSURING PROHIBITION ON DIRECT COR-
7 PORATE AND LABOR SPENDING.—If section 316(a) of the
8 Federal Election Campaign Act of 1971 is held to be in-
9 valid by reason of the amendments made by this section,
10 then the amendments made by subsections (a), (b), and
11 (c) of this section shall not apply to contributions by any
12 political committee that is directly or indirectly estab-
13 lished, administered, or supported by a connected organi-
14 zation which is a bank, corporation, or other organization
15 described in such section 316(a).

16 (f) RESTRICTIONS ON CONTRIBUTIONS TO POLITICAL
17 COMMITTEES.—Paragraphs (1)(C) and (2)(C) of section
18 315(a) of FECA (2 U.S.C. 441a(a) (1)(D) and (2)(D))
19 are each amended by striking “\$5,000” and inserting
20 “\$1,000”.

21 (g) EFFECTIVE DATES.—(1) Except as provided in
22 paragraph (2), the amendments made by this section shall
23 apply to elections (and the election cycles relating thereto)
24 occurring after December 31, 1996.

1 (2) In applying the amendments made by this section,
2 there shall not be taken into account—

3 (A) contributions made or received before Janu-
4 ary 1, 1996; or

5 (B) contributions made to, or received by, a
6 candidate on or after January 1, 1996, to the extent
7 such contributions are not greater than the excess
8 (if any) of—

9 (i) such contributions received by any op-
10 ponent of the candidate before January 1,
11 1996, over

12 (ii) such contributions received by the can-
13 didate before January 1, 1996.

14 **SEC. 103. REPORTING REQUIREMENTS.**

15 Title III of FECA is amended by inserting after sec-
16 tion 304 the following new section:

17 “REPORTING REQUIREMENTS FOR SENATE CANDIDATES

18 “SEC. 304A. (a) CANDIDATE OTHER THAN ELIGI-
19 BLE SENATE CANDIDATE.—(1) Each candidate for the of-
20 fice of United States Senator who does not file a certifi-
21 cation with the Secretary of the Senate under section
22 501(c) shall file with the Secretary of the Senate a dec-
23 laration as to whether such candidate intends to make ex-
24 penditures for the general election in excess of the general
25 election expenditure limit applicable to an eligible Senate

1 candidate under section 502(b). Such declaration shall be
2 filed at the time provided in section 501(c)(2).

3 “(2) Any candidate for the United States Senate who
4 qualifies for the ballot for a general election—

5 “(A) who is not an eligible Senate candidate
6 under section 501; and

7 “(B) who either raises aggregate contributions,
8 or makes or obligates to make aggregate expendi-
9 tures, for the general election which exceed 75 per-
10 cent of the general election expenditure limit appli-
11 cable to an eligible Senate candidate under section
12 502(b),

13 shall file a report with the Secretary of the Senate within
14 24 hours after such contributions have been raised or such
15 expenditures have been made or obligated to be made (or,
16 if later, within 24 hours after the date of qualification for
17 the general election ballot), setting forth the candidate's
18 total contributions and total expenditures for such election
19 as of such date. Thereafter, such candidate shall file addi-
20 tional reports (until such contributions or expenditures ex-
21 ceed 200 percent of such limit) with the Secretary of the
22 Senate within 24 hours after each time additional con-
23 tributions are raised, or expenditures are made or are obli-
24 gated to be made, which in the aggregate exceed an
25 amount equal to 10 percent of such limit and after the

1 total contributions or expenditures exceed $133\frac{1}{3}$, $166\frac{2}{3}$,
2 and 200 percent of such limit.

3 “(3) The Commission—

4 “(A) shall, within 24 hours of receipt of a dec-
5 laration or report under paragraph (1) or (2), notify
6 each eligible Senate candidate in the election in-
7 volved about such declaration or report; and

8 “(B) if an opposing candidate has raised aggre-
9 gate contributions, or made or has obligated to make
10 aggregate expenditures, in excess of the applicable
11 general election expenditure limit under section
12 502(b), shall certify, pursuant to the provisions of
13 subsection (d), such eligibility for payment of any
14 amount to which such eligible Senate candidate is
15 entitled under section 503(a).

16 “(4) Notwithstanding the reporting requirements
17 under this subsection, the Commission may make its own
18 determination that a candidate in a general election who
19 is not an eligible Senate candidate has raised aggregate
20 contributions, or made or has obligated to make aggregate
21 expenditures, in the amounts which would require a report
22 under paragraph (2). The Commission shall, within 24
23 hours after making each such determination, notify each
24 eligible Senate candidate in the general election involved
25 about such determination, and shall, when such contribu-

1 tions or expenditures exceed the general election expendi-
2 ture limit under section 502(b), certify (pursuant to the
3 provisions of subsection (d)) such candidate's eligibility for
4 payment of any amount under section 503(a).

5 “(b) REPORTS ON PERSONAL FUNDS.—(1) Any can-
6 didate for the United States Senate who during the elec-
7 tion cycle expends more than the limitation under section
8 502(a) during the election cycle from his personal funds,
9 the funds of his immediate family, and personal loans in-
10 curred by the candidate and the candidate's immediate
11 family shall file a report with the Secretary of the Senate
12 within 24 hours after such expenditures have been made
13 or loans incurred.

14 “(2) The Commission within 24 hours after a report
15 has been filed under paragraph (1) shall notify each eligi-
16 ble Senate candidate in the election involved about each
17 such report.

18 “(3) Notwithstanding the reporting requirements
19 under this subsection, the Commission may make its own
20 determination that a candidate for the United States Sen-
21 ate has made expenditures in excess of the amount under
22 paragraph (1). The Commission within 24 hours after
23 making such determination shall notify each eligible Sen-
24 ate candidate in the general election involved about each
25 such determination.

1 “(c) CANDIDATES FOR OTHER OFFICES.—(1) Each
2 individual—

3 “(A) who becomes a candidate for the office of
4 United States Senator;

5 “(B) who, during the election cycle for such of-
6 fice, held any other Federal, State, or local office or
7 was a candidate for such other office; and

8 “(C) who expended any amount during such
9 election cycle before becoming a candidate for the of-
10 fice of United States Senator which would have been
11 treated as an expenditure if such individual had
12 been such a candidate, including amounts for activi-
13 ties to promote the image or name recognition of
14 such individual,

15 shall, within 7 days of becoming a candidate for the office
16 of United States Senator, report to the Secretary of the
17 Senate the amount and nature of such expenditures.

18 “(2) Paragraph (1) shall not apply to any expendi-
19 tures in connection with a Federal, State, or local election
20 which has been held before the individual becomes a can-
21 didate for the office of United States Senator.

22 “(3) The Commission shall, as soon as practicable,
23 make a determination as to whether the amounts included
24 in the report under paragraph (1) were made for purposes

1 of influencing the election of the individual to the office
2 of United States Senator.

3 “(d) CERTIFICATIONS.—Notwithstanding section
4 505(a), the certification required by this section shall be
5 made by the Commission on the basis of reports filed in
6 accordance with the provisions of this Act, or on the basis
7 of such Commission’s own investigation or determination.

8 “(e) COPIES OF REPORTS AND PUBLIC INSPEC-
9 TION.—The Secretary of the Senate shall transmit a copy
10 of any report or filing received under this section or of
11 title V (whenever a 24-hour response is required of the
12 Commission) as soon as possible (but no later than 4
13 working hours of the Commission) after receipt of such
14 report or filing, and shall make such report or filing avail-
15 able for public inspection and copying in the same manner
16 as the Commission under section 311(a)(4), and shall pre-
17 serve such reports and filings in the same manner as the
18 Commission under section 311(a)(5).

19 “(f) DEFINITIONS.—For purposes of this section, any
20 term used in this section which is used in title V shall
21 have the same meaning as when used in title V.”.

22 **SEC. 104. DISCLOSURE BY NONELIGIBLE CANDIDATES.**

23 Section 318 of FECA (2 U.S.C. 441d), as amended
24 by section 133, is amended by adding at the end thereof
25 the following:

1 “(e) If a broadcast, cablecast, or other communica-
2 tion is paid for or authorized by a candidate in the general
3 election for the office of United States Senator who is not
4 an eligible Senate candidate, or the authorized committee
5 of such candidate, such communication shall contain the
6 following sentence: ‘This candidate has not agreed to vol-
7 untary campaign spending limits.’.”.

8 **Subtitle B—General Provisions**

9 **SEC. 131. BROADCAST RATES AND PREEMPTION.**

10 (a) BROADCAST RATES.—Section 315(b) of the Com-
11 munications Act of 1934 (47 U.S.C. 315(b)) is amended—

12 (1) in paragraph (1)—

13 (A) by striking “forty-five” and inserting
14 “30”;

15 (B) by striking “sixty” and inserting “45”;
16 and

17 (C) by striking “lowest unit charge of the
18 station for the same class and amount of time
19 for the same period” and inserting “lowest
20 charge of the station for the same amount of
21 time for the same period on the same date”;
22 and

23 (2) by adding at the end the following new sen-
24 tence:

1 “In the case of an eligible Senate candidate (as defined
2 in section 301(19) of the Federal Election Campaign Act
3 of 1971), the charges during the general election period
4 (as defined in section 301(21) of such Act) shall not ex-
5 ceed 50 percent of the lowest charge described in para-
6 graph (1).”.

7 (b) PREEMPTION; ACCESS.—Section 315 of the Com-
8 munications Act of 1934 (47 U.S.C. 315) is amended by
9 redesignating subsections (c) and (d) as subsections (e)
10 and (f), respectively, and by inserting immediately after
11 subsection (b) the following new subsection:

12 “(c)(1) Except as provided in paragraph (2), a li-
13 censee shall not preempt the use, during any period speci-
14 fied in subsection (b)(1), of a broadcasting station by a
15 legally qualified candidate for public office who has pur-
16 chased and paid for such use pursuant to the provisions
17 of subsection (b)(1).

18 “(2) If a program to be broadcast by a broadcasting
19 station is preempted because of circumstances beyond the
20 control of the broadcasting station, any candidate adver-
21 tising spot scheduled to be broadcast during that program
22 may also be preempted.

23 “(d) In the case of a legally qualified candidate for
24 the United States Senate, a licensee shall provide broad-

1 cast time without regard to the rates charged for the
2 time.”.

3 **SEC. 132. EXTENSION OF REDUCED THIRD-CLASS MAILING**
4 **RATES TO ELIGIBLE SENATE CANDIDATES.**

5 Section 3626(e) of title 39, United States Code, is
6 amended—

7 (1) in paragraph (2)(A)—

8 (A) by striking “and the National” and in-
9 serting “the National”; and

10 (B) by striking “Committee;” and insert-
11 ing “Committee, and, subject to paragraph (3),
12 the principal campaign committee of an eligible
13 House of Representatives or Senate can-
14 didate;”;

15 (2) in paragraph (2)(B), by striking “and”
16 after the semicolon;

17 (3) in paragraph (2)(C), by striking the period
18 and inserting “; and”;

19 (4) by adding after paragraph (2)(C) the fol-
20 lowing new subparagraph:

21 “(D) The terms ‘eligible Senate candidate’ and
22 ‘principal campaign committee’ have the meanings
23 given those terms in section 301 of the Federal
24 Election Campaign Act of 1971.”; and

1 (5) by adding after paragraph (2) the following
2 new paragraph:

3 “(3) The rate made available under this subsection
4 with respect to an eligible Senate candidate shall apply
5 only to—

6 “(A) the general election period (as defined in
7 section 301 of the Federal Election Campaign Act of
8 1971); and

9 “(B) that number of pieces of mail equal to the
10 number of individuals in the voting age population
11 (as certified under section 315(e) of such Act) of the
12 congressional district or State, whichever is applica-
13 ble.”.

14 **SEC. 133. REPORTING REQUIREMENTS FOR CERTAIN INDE-**
15 **PENDENT EXPENDITURES.**

16 Section 304(c) of FECA (2 U.S.C. 434(c)) is amend-
17 ed—

18 (1) in paragraph (2), by striking out the undes-
19 ignated matter after subparagraph (C);

20 (2) by redesignating paragraph (3) as para-
21 graph (5); and

22 (3) by inserting after paragraph (2), as amend-
23 ed by paragraph (1), the following new paragraphs:

24 “(3)(A) Any independent expenditure (including
25 those described in subsection (b)(6)(B)(iii) of this section)

1 aggregating \$1,000 or more made after the 20th day, but
2 more than 24 hours, before any election shall be reported
3 within 24 hours after such independent expenditure is
4 made.

5 “(B) Any independent expenditure aggregating
6 \$10,000 or more made at any time up to and including
7 the 20th day before any election shall be reported within
8 48 hours after such independent expenditure is made. An
9 additional statement shall be filed each time independent
10 expenditures aggregating \$10,000 are made with respect
11 to the same election as the initial statement filed under
12 this section.

13 “(C) Such statement shall be filed with the Secretary
14 of the Senate and the Secretary of State of the State in-
15 volved and shall contain the information required by sub-
16 section (b)(6)(B)(iii) of this section, including whether the
17 independent expenditure is in support of, or in opposition
18 to, the candidate involved. The Secretary of the Senate
19 shall as soon as possible (but not later than 4 working
20 hours of the Commission) after receipt of a statement
21 transmit it to the Commission. Not later than 48 hours
22 after the Commission receives a report, the Commission
23 shall transmit a copy of the report to each candidate seek-
24 ing nomination or election to that office.

1 “(D) For purposes of this section, the term ‘made’
2 includes any action taken to incur an obligation for pay-
3 ment.

4 “(4)(A) If any person intends to make independent
5 expenditures totaling \$5,000 during the 20 days before
6 an election, such person shall file a statement no later
7 than the 20th day before the election.

8 “(B) Such statement shall be filed with the Secretary
9 of the Senate and the Secretary of State of the State in-
10 volved, and shall identify each candidate whom the ex-
11 penditure will support or oppose. The Secretary of the
12 Senate shall as soon as possible (but not later than 4
13 working hours of the Commission) after receipt of a state-
14 ment transmit it to the Commission. Not later than 48
15 hours after the Commission receives a statement under
16 this paragraph, the Commission shall transmit a copy of
17 the statement to each candidate identified.

18 “(5) The Commission may make its own determina-
19 tion that a person has made, or has incurred obligations
20 to make, independent expenditures with respect to any
21 Federal election which in the aggregate exceed the applica-
22 ble amounts under paragraph (3) or (4). The Commission
23 shall notify each candidate in such election of such deter-
24 mination within 24 hours of making it.

1 “(6) At the same time as a candidate is notified
2 under paragraph (3), (4), or (5) with respect to expendi-
3 tures during a general election period, the Commission
4 shall certify eligibility to receive benefits under section
5 504(a) or section 604(b).

6 “(7) The Secretary of the Senate shall make any
7 statement received under this subsection available for pub-
8 lic inspection and copying in the same manner as the Com-
9 mission under section 311(a)(4), and shall preserve such
10 statements in the same manner as the Commission under
11 section 311(a)(5).”

12 **SEC. 134. CAMPAIGN ADVERTISING AMENDMENTS.**

13 Section 318 of FECA (2 U.S.C. 441d) is amended—

14 (1) in the matter before paragraph (1) of sub-
15 section (a), by striking “an expenditure” and insert-
16 ing “a disbursement”;

17 (2) in the matter before paragraph (1) of sub-
18 section (a), by striking “direct”;

19 (3) in paragraph (3) of subsection (a); by in-
20 serting after “name” the following “and permanent
21 street address”; and

22 (4) by adding at the end the following new sub-
23 sections:

24 “(c) Any printed communication described in sub-
25 section (a) shall be—

1 “(1) of sufficient type size to be clearly read-
2 able by the recipient of the communication;

3 “(2) contained in a printed box set apart from
4 the other contents of the communication; and

5 “(3) consist of a reasonable degree of color con-
6 trast between the background and the printed state-
7 ment.

8 “(d)(1) Any broadcast or cablecast communication
9 described in subsection (a)(1) or subsection (a)(2) shall
10 include, in addition to the requirements of those sub-
11 sections an audio statement by the candidate that identi-
12 fies the candidate and states that the candidate has ap-
13 proved the communication.

14 “(2) If a broadcast or cablecast communication de-
15 scribed in paragraph (1) is broadcast or cablecast by
16 means of television, the statement required by paragraph
17 (1) shall—

18 “(A) appear in a clearly readable manner with
19 a reasonable degree of color contrast between the
20 background and the printed statement, for a period
21 of at least 4 seconds; and

22 “(B) be accompanied by a clearly identifiable
23 photographic or similar image of the candidate.

24 “(e) Any broadcast or cablecast communication de-
25 scribed in subsection (a)(3) shall include, in addition to

1 the requirements of those subsections, in a clearly spoken
2 manner, the following statement—

3 ‘ is responsible for the content of
4 this advertisement.’

5 with the blank to be filled in with the name of the political
6 committee or other person paying for the communication
7 and the name of any connected organization of the payor;
8 and, if broadcast or cablecast by means of television, shall
9 also appear in a clearly readable manner with a reasonable
10 degree of color contrast between the background and the
11 printed statement, for a period of at least 4 seconds.”.

12 **SEC. 135. DEFINITIONS.**

13 (a) IN GENERAL.—Section 301 of FECA (2 U.S.C.
14 431) is amended by striking paragraph (19) and inserting
15 the following new paragraphs:

16 “(19) The term ‘eligible Senate candidate’ means a
17 candidate who is eligible under section 502 to receive bene-
18 fits under title V.

19 “(20) The term ‘general election’ means any election
20 which will directly result in the election of a person to a
21 Federal office, but does not include an open primary elec-
22 tion.

23 “(21) The term ‘general election period’ means, with
24 respect to any candidate, the period beginning on the day
25 after the date of the primary or runoff election for the

1 specific office the candidate is seeking, whichever is later,
2 and ending on the earlier of—

3 “(A) the date of such general election; or

4 “(B) the date on which the candidate withdraws
5 from the campaign or otherwise ceases actively to
6 seek election.

7 “(22) The term ‘immediate family’ means—

8 “(A) a candidate’s spouse;

9 “(B) a child, stepchild, parent, grandparent,
10 brother, half-brother, sister or half-sister of the can-
11 didate or the candidate’s spouse; and

12 “(C) the spouse of any person described in sub-
13 paragraph (B).

14 “(23) The term ‘major party’ has the meaning given
15 such term in section 9002(6) of the Internal Revenue Code
16 of 1986, except that if a candidate qualified under State
17 law for the ballot in a general election in an open primary
18 in which all the candidates for the office participated and
19 which resulted in the candidate and at least one other can-
20 didate qualifying for the ballot in the general election,
21 such candidate shall be treated as a candidate of a major
22 party for purposes of title V.

23 “(24) The term ‘primary election’ means an election
24 which may result in the selection of a candidate for the
25 ballot in a general election for a Federal office.

1 “(25) The term ‘primary election period’ means, with
2 respect to any candidate, the period beginning on the day
3 following the date of the last election for the specific office
4 the candidate is seeking and ending on the earlier of—

5 “(A) the date of the first primary election for
6 that office following the last general election for that
7 office; or

8 “(B) the date on which the candidate withdraws
9 from the election or otherwise ceases actively to seek
10 election.

11 “(26) The term ‘runoff election’ means an election
12 held after a primary election which is prescribed by appli-
13 cable State law as the means for deciding which candidate
14 will be on the ballot in the general election for a Federal
15 office.

16 “(27) The term ‘runoff election period’ means, with
17 respect to any candidate, the period beginning on the day
18 following the date of the last primary election for the spe-
19 cific office such candidate is seeking and ending on the
20 date of the runoff election for such office.

21 “(28) The term ‘voting age population’ means the
22 resident population, 18 years of age or older, as certified
23 pursuant to section 315(e).

24 “(29) The term ‘election cycle’ means—

1 “(A) in the case of a candidate or the author-
2 ized committees of a candidate, the term beginning
3 on the day after the date of the most recent general
4 election for the specific office or seat which such
5 candidate seeks and ending on the date of the next
6 general election for such office or seat; or

7 “(B) for all other persons, the term beginning
8 on the first day following the date of the last general
9 election and ending on the date of the next general
10 election.

11 “(30) The terms ‘Senate Election Campaign Fund’
12 and ‘Fund’ mean the Senate Election Campaign Fund es-
13 tablished under section 509.

14 “(31) The term ‘lobbyist’ means—

15 “(A) a person required to register under section
16 308 of the Federal Regulation of Lobbying Act (2
17 U.S.C. 267) or the Foreign Agents Registration Act
18 of 1938 (22 U.S.C. 611 et seq.); and

19 “(B) a person who receives compensation in re-
20 turn for having contact with Congress on any legis-
21 lative matter.”.

22 (b) IDENTIFICATION.—Section 301(13) of FECA (2
23 U.S.C. 431(13)) is amended by striking “mailing address”
24 and inserting “permanent residence address”.

1 SEC. 136. PROVISIONS RELATING TO FRANKED MASS
2 MAILINGS.

3 (a) MASS MAILINGS OF SENATORS.—Section
4 3210(a)(6) of title 39, United States Code, is amended—

5 (1) in subparagraph (A), by striking “It is the
6 intent of Congress that a Member of, or a Member-
7 elect to, Congress” and inserting “A Member of, or
8 Member-elect to, the House”; and

9 (2) in subparagraph (C)—

10 (A) by striking “if such mass mailing is
11 postmarked fewer than 60 days immediately be-
12 fore the date” and inserting “if such mass mail-
13 ing is postmarked during the calendar year”;
14 and

15 (B) by inserting “or reelection” imme-
16 diately before the period.

17 (b) MASS MAILINGS OF HOUSE MEMBERS.—Section
18 3210 of title 39, United States Code, is amended—

19 (1) in subsection (a)(7) by striking “, except
20 that—” and all that follows through the end of sub-
21 paragraph (B) and inserting a period; and

22 (2) in subsection (d)(1) by striking “delivery—”
23 and all that follows through the end of subparagraph
24 (B) and inserting “delivery within that area con-
25 stituting the congressional district or State from
26 which the Member was elected.”.

1 " (c) PROHIBITION ON USE OF OFFICIAL FUNDS.—
 2 The Committee on House Administration of the House of
 3 Representatives may not approve any payment, nor may
 4 a Member of the House of Representatives make any ex-
 5 penditure from, any allowance of the House of Represent-
 6 atives or any other official funds if any portion of the pay-
 7 ment or expenditure is for any cost related to a mass mail-
 8 ing by a Member of the House of Representatives outside
 9 the congressional district of the Member.

10 **TITLE II—INDEPENDENT** 11 **EXPENDITURES**

12 **SEC. 201. CLARIFICATION OF DEFINITIONS RELATING TO** 13 **INDEPENDENT EXPENDITURES.**

14 (a) INDEPENDENT EXPENDITURE DEFINITION
 15 AMENDMENT.—Section 301 of FECA (2 U.S.C. 431) is
 16 amended by striking paragraphs (17) and (18) and insert-
 17 ing the following:

18 “(17)(A) The term ‘independent expenditure’ means
 19 an expenditure for an advertisement or other communica-
 20 tion that—

21 “(i) contains express advocacy; and

22 “(ii) is made without the participation or co-
 23 operation of a candidate or a candidate’s representa-
 24 tive.

1 “(B) The following shall not be considered an inde-
2 pendent expenditure:

3 “(i) An expenditure made by a political commit-
4 tee of a political party.

5 “(ii) An expenditure made by a person who,
6 during the election cycle, has communicated with or
7 received information from a candidate or a rep-
8 resentative of that candidate regarding activities
9 that have the purpose of influencing that candidate’s
10 election to Federal office, where the expenditure is
11 in support of that candidate or in opposition to an-
12 other candidate for that office.

13 “(iii) An expenditure if there is any arrange-
14 ment, coordination, or direction with respect to the
15 expenditure between the candidate or the candidate’s
16 agent and the person making the expenditure.

17 “(iv) An expenditure if, in the same election
18 cycle, the person making the expenditure is or has
19 been—

20 “(I) authorized to raise or expend funds on
21 behalf of the candidate or the candidate’s au-
22 thorized committees; or

23 “(II) serving as a member, employee, or
24 agent of the candidate’s authorized committees
25 in an executive or policymaking position.

1 “(v) An expenditure if the person making the
2 expenditure has advised or counseled the candidate
3 or the candidate’s agents at any time on the can-
4 didate’s plans, projects, or needs relating to the can-
5 didate’s pursuit of nomination for election, or elec-
6 tion, to Federal office, in the same election cycle, in-
7 cluding any advice relating to the candidate’s deci-
8 sion to seek Federal office.

9 “(vi) An expenditure if the person making the
10 expenditure retains the professional services of any
11 individual or other person also providing those serv-
12 ices in the same election cycle to the candidate in
13 connection with the candidate’s pursuit of nomina-
14 tion for election, or election, to Federal office, in-
15 cluding any services relating to the candidate’s deci-
16 sion to seek Federal office.

17 “(vii) An expenditure if the person making the
18 expenditure has consulted at any time during the
19 same election cycle about the candidate’s plans,
20 projects, or needs relating to the candidate’s pursuit
21 of nomination for election, or election, to Federal of-
22 fice, with—

23 “(I) any officer, director, employee or
24 agent of a party committee that has made or
25 intends to make expenditures or contributions,

pursuant to subsections (a), (d), or (h) of section 315 in connection with the candidate's campaign; or

“(II) any person whose professional services have been retained by a political party committee that has made or intends to make expenditures or contributions pursuant to subsections (a), (d), or (h) of section 315 in connection with the candidate's campaign.

For purposes of this subparagraph, the person making the expenditure shall include any officer, director, employee, or agent of such person.

“(18) The term ‘express advocacy’ means, when a communication is taken as a whole, an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular political party, or a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity.”.

(b) CONTRIBUTION DEFINITION AMENDMENT.—Section 301(8)(A) of FECA (2 U.S.C. 431(8)(A)) is amended—

(1) in clause (i), by striking “or” after the semicolon at the end;

1 (2) in clause (ii), by striking the period at the
2 end and inserting “; or”; and

3 (3) by adding at the end the following new
4 clause:

5 “(iii) any payment or other transaction referred
6 to in paragraph (17)(A)(i) that does not qualify as
7 an independent expenditure under paragraph
8 (17)(A)(ii).”.

9 **TITLE III—EXPENDITURES**
10 **Subtitle A—Personal Loans; Credit**

11 **SEC. 301. PERSONAL CONTRIBUTIONS AND LOANS.**

12 Section 315 of FECA (2 U.S.C. 441a) is amended
13 by adding at the end the following new subsection:

14 “(i) **LIMITATIONS ON PAYMENTS TO CANDIDATES.—**

15 (1) If a candidate or a member of the candidate’s imme-
16 diate family made any loans to the candidate or to the
17 candidate’s authorized committees during any election
18 cycle, no contributions after the date of the general elec-
19 tion for such election cycle may be used to repay such
20 loans.

21 “(2) No contribution by a candidate or member of
22 the candidate’s immediate family may be returned to the
23 candidate or member other than as part of a pro rata dis-
24 tribution of excess contributions to all contributors.”.

1 **SEC. 302. EXTENSIONS OF CREDIT.**

2 Section 301(8)(A) of FECA (2 U.S.C. 431(8)(A)), as
3 amended by section 201(b), is amended—

4 (1) by striking “or” at the end of clause (ii);

5 (2) by striking the period at the end of clause

6 (iii) and inserting “; or”; and

7 (3) by inserting at the end the following new
8 clause:

9 “(iv) with respect to a candidate and the
10 candidate’s authorized committees, any exten-
11 sion of credit for goods or services relating to
12 advertising on broadcasting stations, in news-
13 papers or magazines, or by mailings, or relating
14 to other similar types of general public political
15 advertising, if such extension of credit is—

16 “(I) in an amount of more than
17 \$1,000; and

18 “(II) for a period greater than the pe-
19 riod, not in excess of 60 days, for which
20 credit is generally extended in the normal
21 course of business after the date on which
22 such goods or services are furnished or the
23 date of the mailing in the case of advertis-
24 ing by a mailing.”.

1 **Subtitle B—Provisions Relating to**
2 **Soft Money of Political Parties**

3 **SEC. 311. REPORTING REQUIREMENTS.**

4 (a) **REPORTING REQUIREMENTS.**—Section 304 of
5 FECA (2 U.S.C. 434), as amended by section 133(a), is
6 amended by adding at the end thereof the following new
7 subsection:

8 “(e) **POLITICAL COMMITTEES.**—(1) The national
9 committee of a political party and any congressional cam-
10 paign committee of a political party, and any subordinate
11 committee of either, shall report all receipts and disburse-
12 ments during the reporting period, whether or not in con-
13 nection with an election for Federal office.

14 “(2) Any political committee to which paragraph (1)
15 does not apply shall report any receipts or disbursements
16 which are used in connection with a Federal election.

17 “(3) If a political committee has receipts or disburse-
18 ments to which this subsection applies from any person
19 aggregating in excess of \$200 for any calendar year, the
20 political committee shall separately itemize its reporting
21 for such person in the same manner as under subsection
22 (b) (3)(A), (5), or (6).

23 “(4) Reports required to be filed by this subsection
24 shall be filed for the same time periods required for politi-
25 cal committees under subsection (a).”.

1 (b) REPORT OF EXEMPT CONTRIBUTIONS.—Section
2 301(8) of the Federal Election Campaign Act of 1971 (2
3 U.S.C. 431(8)) is amended by inserting at the end thereof
4 the following:

5 “(C) The exclusion provided in clause (viii)
6 of subparagraph (B) shall not apply for pur-
7 poses of any requirement to report contribu-
8 tions under this Act, and all such contributions
9 aggregating in excess of \$200 shall be
10 reported.”.

11 (c) REPORTS BY STATE COMMITTEES.—Section 304
12 of FECA (2 U.S.C. 434), as amended by subsection (a),
13 is amended by adding at the end thereof the following new
14 subsection:

15 “(f) FILING OF STATE REPORTS.—In lieu of any re-
16 port required to be filed by this Act, the Commission may
17 allow a State committee of a political party to file with
18 the Commission a report required to be filed under State
19 law if the Commission determines such reports contain
20 substantially the same information.”.

21 (d) OTHER REPORTING REQUIREMENTS.—

22 (1) AUTHORIZED COMMITTEES.—Paragraph (4)
23 of section 304(b) of FECA (2 U.S.C. 434(b)(4)) is
24 amended by striking “and” at the end of subpara-
25 graph (H), by inserting “and” at the end of sub-

1 paragraph (I), and by adding at the end the follow-
 2 ing new subparagraph:

3 “(J) in the case of an authorized commit-
 4 tee, disbursements for the primary election, the
 5 general election, and any other election in which
 6 the candidate participates;”.

7 (2) NAMES AND ADDRESSES.—Subparagraph
 8 (A) of section 304(b)(5) of FECA (2 U.S.C.
 9 434(b)(5)(A)) is amended—

10 (A) by striking “within the calendar year”,
 11 and

12 (B) by inserting “, and the election to
 13 which the operating expenditure relates” after
 14 “operating expenditure”.

15 **TITLE IV—CONTRIBUTIONS**

16 **SEC. 401. CONTRIBUTIONS THROUGH INTERMEDIARIES** 17 **AND CONDUITS; PROHIBITION ON CERTAIN** 18 **CONTRIBUTIONS BY LOBBYISTS.**

19 (a) CONTRIBUTIONS THROUGH INTERMEDIARIES
 20 AND CONDUITS.—Section 315(a)(8) of FECA (2 U.S.C.
 21 441a(a)(8)) is amended to read as follows:

22 “(8) For the purposes of this subsection:

23 “(A) Contributions made by a person, either di-
 24 rectly or indirectly, to or on behalf of a particular
 25 candidate, including contributions that are in any

1 way earmarked or otherwise directed through an
2 intermediary or conduit to a candidate, shall be
3 treated as contributions from the person to the can-
4 didate.

5 “(B) Contributions made directly or indirectly
6 by a person to or on behalf of a particular candidate
7 through an intermediary or conduit, including con-
8 tributions made or arranged to be made by an
9 intermediary or conduit, shall be treated as contribu-
10 tions from the intermediary or conduit to the can-
11 didate if—

12 “(i) the contributions made through the
13 intermediary or conduit are in the form of a
14 check or other negotiable instrument made pay-
15 able to the intermediary or conduit rather than
16 the intended recipient; or

17 “(ii) the intermediary or conduit is—

18 “(I) a political committee;

19 “(II) an officer, employee, or agent of
20 such a political committee;

21 “(III) a political party;

22 “(IV) a partnership or sole proprietor-
23 ship;

24 “(V) a person who is required to reg-
25 ister or to report its lobbying activities, or

1 a lobbyist whose activities are required to
2 be reported, under section 308 of the Fed-
3 eral Regulation of Lobbying Act (2 U.S.C.
4 267), the Foreign Agents Registration Act
5 of 1938 (22 U.S.C. 611 et seq.), or any
6 successor Federal law requiring a person
7 who is a lobbyist or foreign agent to reg-
8 ister or a person to report its lobbying ac-
9 tivities; or

10 “(VI) an organization prohibited from
11 making contributions under section 316, or
12 an officer, employee, or agent of such an
13 organization acting on the organization’s
14 behalf.

15 “(C)(i) The term ‘intermediary or conduit’ does
16 not include—

17 “(I) a candidate or representative of a can-
18 didate receiving contributions to the candidate’s
19 principal campaign committee or authorized
20 committee;

21 “(II) a professional fundraiser com-
22 pensated for fundraising services at the usual
23 and customary rate, but only if the individual
24 is not described in subparagraph (B)(ii);

“(III) a volunteer hosting a fundraising event at the volunteer’s home, in accordance with section 301(8)(B), but only if the individual is not described in subparagraph (B)(ii); or

“(IV) an individual who transmits a contribution from the individual’s spouse.

“(ii) The term ‘representative’ means an individual who is expressly authorized by the candidate to engage in fundraising, and who occupies a significant position within the candidate’s campaign organization, provided that the individual is not described in subparagraph (B)(ii).

“(iii) The term ‘contributions made or arranged to be made’ includes—

“(I) contributions delivered to a particular candidate or the candidate’s authorized committee or agent; and

“(II) contributions directly or indirectly arranged to be made to a particular candidate or the candidate’s authorized committee or agent, in a manner that identifies directly or indirectly to the candidate or authorized committee or agent the person who arranged the making of the contributions or the person on whose behalf such person was acting.

1 Such term does not include contributions made, or
2 arranged to be made, by reason of an oral or written
3 communication by a Federal candidate or office-
4 holder expressly advocating the nomination for elec-
5 tion, or election, of any other Federal candidate and
6 encouraging the making of a contribution to such
7 other candidate.

8 “(iv) The term ‘acting on the organization’s be-
9 half’ includes the following activities by an officer,
10 employee or agent of a person described in subpara-
11 graph (B)(ii)(VI):

12 “(I) Soliciting or directly or indirectly ar-
13 ranging the making of a contribution to a par-
14 ticular candidate in the name of, or by using
15 the name of, such a person.

16 “(II) Soliciting or directly or indirectly ar-
17 ranging the making of a contribution to a par-
18 ticular candidate using other than incidental re-
19 sources of such a person.

20 “(III) Soliciting contributions for a par-
21 ticular candidate by substantially directing the
22 solicitations to other officers, employees, or
23 agents of such a person.

24 “(D) Nothing in this paragraph shall prohibit—

1 “(i) bona fide joint fundraising efforts con-
2 ducted solely for the purpose of sponsorship of
3 a fundraising reception, dinner, or other similar
4 event, in accordance with rules prescribed by
5 the Commission, by—

6 “(I) 2 or more candidates;

7 “(II) 2 or more national, State, or
8 local committees of a political party within
9 the meaning of section 301(4) acting on
10 their own behalf; or

11 “(III) a special committee formed by
12 2 or more candidates, or a candidate and
13 a national, State, or local committee of a
14 political party acting on their own behalf;
15 or

16 “(ii) fundraising efforts for the benefit of
17 a candidate that are conducted by another can-
18 didate.

19 When a contribution is made to a candidate through an
20 intermediary or conduit, the intermediary or conduit shall
21 report the original source and the intended recipient of
22 the contribution to the Commission and to the intended
23 recipient.”.

24 (b) PROHIBITION OF CERTAIN CONTRIBUTIONS BY
25 LOBBYISTS.—Section 315 of FECA (2 U.S.C. 441a), as

1 amended by section 301, is amended by adding at the end
2 the following new subsection:

3 “(j)(1) A lobbyist, or a political committee controlled
4 by a lobbyist, shall not make contributions to, or solicit
5 contributions for or on behalf of—

6 “(A) any member of Congress with whom the
7 lobbyist has, during the preceding 12 months, made
8 a lobbying contact; or

9 “(B) any authorized committee of the President
10 of the United States if, during the preceding 12
11 months, the lobbyist has made a lobbying contact
12 with a covered executive branch official.

13 “(2) A lobbyist who, or a lobbyist whose political com-
14 mittee, has made any contribution to, or solicited contribu-
15 tions for or on behalf of, any member of Congress or can-
16 didate for Congress (or any authorized committee of the
17 President) shall not, during the 12 months following such
18 contribution or solicitation, make a lobbying contact with
19 such member or candidate who becomes a member of Con-
20 gress (or a covered executive branch official).

21 “(3) If a lobbyist advises or otherwise suggests to a
22 client of the lobbyist (including a client that is the lobby-
23 ist’s regular employer), or to a political committee that
24 is funded or administered by such a client, that the client

1 or political committee should make a contribution to or
2 solicit a contribution for or on behalf of—

3 “(A) a member of Congress or candidate for
4 Congress, the making or soliciting of such a con-
5 tribution is prohibited if the lobbyist has made a lob-
6 bying contact with the member of Congress within
7 the preceding 12 months; or

8 “(B) an authorized committee of the President,
9 the making or soliciting of such a contribution shall
10 be unlawful if the lobbyist has made a lobbying con-
11 tact with a covered executive branch official within
12 the preceding 12 months.

13 “(4) For purposes of this subsection—

14 “(A) the term ‘covered executive branch official’
15 means the President, Vice-President, any officer or
16 employee of the executive office of the President
17 other than a clerical or secretarial employee, any of-
18 ficer or employee serving in an Executive Level I, II,
19 III, IV, or V position as designated in statute or Ex-
20 ecutive order, any officer or employee serving in a
21 senior executive service position (as defined in sec-
22 tion 3232(a)(2) of title 5, United States Code), any
23 member of the uniformed services whose pay grade
24 is at or in excess of 0–7 under section 201 of title
25 37, United States Code, and any officer or employee

1 serving in a position of confidential or policy-deter-
2 mining character under schedule C of the excepted
3 service pursuant to regulations implementing section
4 2103 of title 5, United States Code;

5 “(B) the term ‘lobbyist’ means—

6 “(i) a person required to register under
7 section 308 of the Federal Regulation of Lobby-
8 ing Act (2 U.S.C. 267) or the Foreign Agents
9 Registration Act of 1938 (22 U.S.C. 611 et
10 seq.) or any successor Federal law requiring a
11 person who is a lobbyist or foreign agent to reg-
12 ister or a person to report its lobbying activi-
13 ties; or

14 “(C) the term ‘lobbying contact’—

15 “(i) means an oral or written communica-
16 tion with or appearance before a member of
17 Congress or covered executive branch official
18 made by a lobbyist representing an interest of
19 another person with regard to—

20 “(I) the formulation, modification, or
21 adoption of Federal legislation (including a
22 legislative proposal);

23 “(II) the formulation, modification, or
24 adoption of a Federal rule, regulation, Ex-
25 ecutive order, or any other program, policy

1 or position of the United States Govern-
2 ment; or

3 “(III) the administration or execution
4 of a Federal program or policy (including
5 the negotiation, award, or administration
6 of a Federal contract, grant, loan, permit,
7 or license); but

8 “(ii) does not include a communication
9 that is—

10 “(I) made by a public official acting
11 in an official capacity;

12 “(II) made by a representative of a
13 media organization who is primarily en-
14 gaged in gathering and disseminating news
15 and information to the public;

16 “(III) made in a speech, article, publi-
17 cation, or other material that is widely dis-
18 tributed to the public or through the
19 media;

20 “(IV) a request for an appointment, a
21 request for the status of a Federal action,
22 or another similar ministerial contact, if
23 there is no attempt to influence a member
24 of Congress or covered executive branch of-
25 ficial at the time of the contact;

1 “(V) made in the course of participa-
2 tion in an advisory committee subject to
3 the Federal Advisory Committee Act (5
4 U.S.C. App.);

5 “(VI) testimony given before a com-
6 mittee, subcommittee, or office of Congress
7 a Federal agency, or submitted for inclu-
8 sion in the public record of a hearing con-
9 ducted by the committee, subcommittee, or
10 office;

11 “(VII) information provided in writing
12 in response to a specific written request
13 from a member of Congress or covered ex-
14 ecutive branch official;

15 “(VIII) required by subpoena, civil in-
16 vestigative demand, or otherwise compelled
17 by statute, regulation, or other action of
18 Congress or a Federal agency;

19 “(IX) made to an agency official with
20 regard to a judicial proceeding, criminal or
21 civil law enforcement inquiry, investigation,
22 or proceeding, or filing required by law;

23 “(X) made in compliance with written
24 agency procedures regarding an adjudica-
25 tion conducted by the agency under section

1 554 of title 5, United States Code, or sub-
2 stantially similar provisions;

3 “(XI) a written comment filed in a
4 public docket and other communication
5 that is made on the record in a public pro-
6 ceeding;

7 “(XII) a formal petition for agency
8 action, made in writing pursuant to estab-
9 lished agency procedures; or

10 “(XIII) made on behalf of a person
11 with regard to the person’s benefits, em-
12 ployment, other personal matters involving
13 only that person, or disclosures pursuant
14 to a whistleblower statute.”.

15 “(5) For purposes of this subsection, a lobbyist shall
16 be considered to make a lobbying contact or communica-
17 tion with a member of Congress if the lobbyist makes a
18 lobbying contact or communication with—

19 “(i) the member of Congress;

20 “(ii) any person employed in the office of
21 the member of Congress; or

22 “(iii) any person employed by a committee,
23 joint committee, or leadership office who, to the
24 knowledge of the lobbyist, was employed at the
25 request of or is employed at the pleasure of, re-

1 ports primarily to, represents, or acts as the
2 agent of the member of Congress.”.

3 **SEC. 402. CONTRIBUTIONS BY DEPENDENTS NOT OF VOT-**
4 **ING AGE.**

5 Section 315 of FECA (2 U.S.C. 441a), as amended
6 by section 401(b), is amended by adding at the end the
7 following new subsection:

8 “(k) For purposes of this section, any contribution
9 by an individual who—

10 “(1) is a dependent of another individual; and

11 “(2) has not, as of the time of such contribu-
12 tion, attained the legal age for voting for elections
13 to Federal office in the State in which such individ-
14 ual resides,

15 shall be treated as having been made by such other indi-
16 vidual. If such individual is the dependent of another indi-
17 vidual and such other individual’s spouse, the contribution
18 shall be allocated among such individuals in the manner
19 determined by them.”.

20 **SEC. 403. CONTRIBUTIONS TO CANDIDATES FROM STATE**
21 **AND LOCAL COMMITTEES OF POLITICAL PAR-**
22 **TIES TO BE AGGREGATED.**

23 Section 315(a) of FECA (2 U.S.C. 441a(a)) is
24 amended by adding at the end the following new para-
25 graph:

1 “(9) A candidate for Federal office may not accept,
2 with respect to an election, any contribution from a State
3 or local committee of a political party (including any sub-
4 ordinate committee of such committee), if such contribu-
5 tion, when added to the total of contributions previously
6 accepted from all such committees of that political party,
7 exceeds a limitation on contributions to a candidate under
8 this section.”.

9 **SEC. 404. LIMITED EXCLUSION OF ADVANCES BY CAM-**
10 **PAIGN WORKERS FROM THE DEFINITION OF**
11 **THE TERM “CONTRIBUTION”.**

12 Section 301(8)(B) of FECA (2 U.S.C. 431(8)(B)) is
13 amended—

14 (1) in clause (xiii), by striking “and” after the
15 semicolon at the end;

16 (2) in clause (xiv), by striking the period at the
17 end and inserting: “; and”; and

18 (3) by adding at the end the following new
19 clause:

20 “(xv) any advance voluntarily made on behalf of
21 an authorized committee of a candidate by an indi-
22 vidual in the normal course of such individual’s re-
23 sponsibilities as a volunteer for, or employee of, the
24 committee, if the advance is reimbursed by the com-
25 mittee within 10 days after the date on which the

1 advance is made, and the value of advances on be-
2 half of a committee does not exceed \$500 with re-
3 spect to an election.”.

4 **TITLE V—REPORTING** 5 **REQUIREMENTS**

6 **SEC. 501. CHANGE IN CERTAIN REPORTING FROM A CAL-** 7 **ENDAR YEAR BASIS TO AN ELECTION CYCLE** 8 **BASIS.**

9 Paragraphs (2) through (7) of section 304(b) of
10 FECA (2 U.S.C. 434(b)(2)–(7)) are amended by inserting
11 after “calendar year” each place it appears the following:
12 “(election cycle, in the case of an authorized committee
13 of a candidate for Federal office)”.

14 **SEC. 502. PERSONAL AND CONSULTING SERVICES.**

15 Section 304(b)(5)(A) of FECA (2 U.S.C.
16 434(b)(5)(A)) is amended by adding before the semicolon
17 at the end the following: “, except that if a person to
18 whom an expenditure is made is merely providing personal
19 or consulting services and is in turn making expenditures
20 to other persons (not including employees) who provide
21 goods or services to the candidate or his or her authorized
22 committees, the name and address of such other person,
23 together with the date, amount and purpose of such ex-
24 penditure shall also be disclosed”.

1 **SEC. 503. REDUCTION IN THRESHOLD FOR REPORTING OF**
2 **CERTAIN INFORMATION BY PERSONS OTHER**
3 **THAN POLITICAL COMMITTEES.**

4 Section 304(b)(3)(A) of FECA (2 U.S.C.
5 434(b)(3)(A)) is amended by striking "\$200" and insert-
6 ing "\$50".

7 **SEC. 504. COMPUTERIZED INDICES OF CONTRIBUTIONS.**

8 Section 311(a) of FECA (2 U.S.C. 438(a)) is amend-
9 ed—

10 (1) by striking "and" at the end of paragraph
11 (9);

12 (2) by striking the period at the end of para-
13 graph (10) and inserting "; and"; and

14 (3) by adding at the end the following new
15 paragraph:

16 "(11) maintain computerized indices of con-
17 tributions of \$50 or more."

18 **TITLE VI—FEDERAL ELECTION**
19 **COMMISSION**

20 **SEC. 601. USE OF CANDIDATES' NAMES.**

21 Section 302(e)(4) of FECA (2 U.S.C. 432(e)(4)) is
22 amended to read as follows:

23 "(4)(A) The name of each authorized committee shall
24 include the name of the candidate who authorized the com-
25 mittee under paragraph (1).

1 “(B) A political committee that is not an authorized
2 committee shall not include the name of any candidate in
3 its name or use the name of any candidate in any activity
4 on behalf of such committee in such a context as to sug-
5 gest that the committee is an authorized committee of the
6 candidate or that the use of the candidate’s name has been
7 authorized by the candidate.”.

8 **SEC. 602. REPORTING REQUIREMENTS.**

9 (a) OPTION TO FILE MONTHLY REPORTS—Section
10 304(a)(2) of FECA (2 U.S.C. 434(a)(2)) is amended—

11 (1) in subparagraph (A) by striking “and” at
12 the end;

13 (2) in subparagraph (B) by striking the period
14 at the end and inserting “; and”; and

15 (3) by inserting the following new subparagraph
16 at the end:

17 “(C) in lieu of the reports required by subpara-
18 graphs (A) and (B), the treasurer may file monthly
19 reports in all calendar years, which shall be filed no
20 later than the 15th day after the last day of the
21 month and shall be complete as of the last day of
22 the month, except that, in lieu of filing the reports
23 otherwise due in November and December of any
24 year in which a regularly scheduled general election
25 is held, a pre-primary election report and a pre-gen-

eral election report shall be filed in accordance with subparagraph (A)(i), a post-general election report shall be filed in accordance with subparagraph (A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.”.

(b) FILING DATE.—Section 304(a)(4)(B) of FECA (2 U.S.C. 434(a)(4)(B)) is amended by striking “20th” and inserting “15th”.

SEC. 603. PROVISIONS RELATING TO THE GENERAL COUNSEL OF THE COMMISSION.

(a) VACANCY IN THE OFFICE OF GENERAL COUNSEL.—Section 306(f) of FECA (2 U.S.C. 437c(f)) is amended by adding at the end the following new paragraph:

“(5) In the event of a vacancy in the office of general counsel, the next highest ranking enforcement official in the general counsel’s office shall serve as acting general counsel with full powers of the general counsel until a successor is appointed.”.

(b) PAY OF THE GENERAL COUNSEL.—Section 306(f)(1) of FECA (2 U.S.C. 437c(f)(1)) is amended—

(1) by inserting “and the general counsel” after “staff director” in the second sentence; and

(2) by striking the third sentence.

1 **SEC. 604. ENFORCEMENT.**

2 (a) BASIS FOR ENFORCEMENT PROCEEDING.—Sec-
3 tion 309(a)(2) of FECA (2 U.S.C. 437g(a)(2)) is amended
4 by striking “it has reason to believe that a person has
5 committed, or is about to commit” and inserting “facts
6 have been alleged or ascertained that, if true, give reason
7 to believe that a person may have committed, or may be
8 about to commit”.

9 (b) AUTHORITY TO SEEK INJUNCTION.—(1) Section
10 309(a) of FECA (2 U.S.C. 437g(a)) is amended by adding
11 at the end the following new paragraph:

12 “(13)(A) If, at any time in a proceeding described
13 in paragraph (1), (2), (3), or (4), the Commission believes
14 that—

15 “(i) there is a substantial likelihood that a vio-
16 lation of this Act or of chapter 95 or chapter 96 of
17 the Internal Revenue Code of 1986 is occurring or
18 is about to occur;

19 “(ii) the failure to act expeditiously will result
20 in irreparable harm to a party affected by the poten-
21 tial violation;

22 “(iii) expeditious action will not cause undue
23 harm or prejudice to the interests of others; and

24 “(iv) the public interest would be best served by
25 the issuance of an injunction,

1 the Commission may initiate a civil action for a temporary
2 restraining order or a temporary injunction pending the
3 outcome of the proceedings described in paragraphs (1),
4 (2), (3), and (4).

5 “(B) An action under subparagraph (A) shall be
6 brought in the United States district court for the district
7 in which the defendant resides, transacts business, or may
8 be found.”.

9 (2) Section 309(a) of FECA (2 U.S.C. 437g(a)) is
10 amended—

11 (A) in paragraph (7) by striking “(5) or (6)”
12 and inserting “(5), (6), or (13)”; and

13 (B) in paragraph (11) by striking “(6)” and in-
14 serting “(6) or (13)”.

15 **SEC. 605. PENALTIES.**

16 (a) **PENALTIES PRESCRIBED IN CONCILIATION**
17 **AGREEMENTS.**—(1) Section 309(a)(5)(A) of FECA (2
18 U.S.C. 437g(a)(5)(A)) is amended by striking “which does
19 not exceed the greater of \$5,000 or an amount equal to
20 any contribution or expenditure involved in such violation”
21 and inserting “which is—

22 “(i) not less than 50 percent of all contribu-
23 tions and expenditures involved in the violation (or
24 such lesser amount as the Commission provides if

1 necessary to ensure that the penalty is not unjustly
2 disproportionate to the violation); and

3 “(ii) not greater than all contributions and ex-
4 penditures involved in the violation”.

5 (2) Section 309(a)(5)(B) of FECA (2 U.S.C.
6 437g(a)(5)(B)) is amended by striking “which does not
7 exceed the greater of \$10,000 or an amount equal to 200
8 percent of any contribution or expenditure involved in such
9 violation” and inserting “which is—

10 “(i) not less than all contributions and expendi-
11 tures involved in the violation; and

12 “(ii) not greater than 150 percent of all con-
13 tributions and expenditures involved in the viola-
14 tion”.

15 (b) PENALTIES WHEN VIOLATIONS ARE ADJU-
16 DICATED IN COURT.—(1) Section 309(a)(6)(A) of FECA
17 (2 U.S.C. 437g(a)(6)(A)) is amended by striking all that
18 follows “appropriate order” and inserting “, including an
19 order for a civil penalty in the amount determined under
20 subparagraph (A) or (B) in the district court of the
21 United States for the district in which the defendant re-
22 sides, transacts business, or may be found.”.

23 (2) Section 309(a)(6)(B) of FECA (2 U.S.C.
24 437g(a)(6)(B)) is amended by striking all that follows

1 "other order" and inserting ", including an order for a
2 civil penalty which is—

3 “(i) not less than all contributions and expendi-
4 tures involved in the violation; and

5 “(ii) not greater than 200 percent of all con-
6 tributions and expenditures involved in the violation,
7 upon a proper showing that the person involved has com-
8 mitted, or is about to commit (if the relief sought is a
9 permanent or temporary injunction or a restraining
10 order), a violation of this Act or chapter 95 of chapter
11 96 of the Internal Revenue Code of 1986.”.

12 (3) Section 309(a)(6)(C) of FECA (29 U.S.C.
13 437g(6)(C)) is amended by striking “a civil penalty” and
14 all that follows and inserting “a civil penalty which is—

15 “(i) not less than 200 percent of all contribu-
16 tions and expenditures involved in the violation; and

17 “(ii) not greater than 250 percent of all con-
18 tributions and expenditures involved in the viola-
19 tion.”.

20 **SEC. 606. RANDOM AUDITS.**

21 Section 311(b) of FECA (2 U.S.C. 438(b)) is amend-
22 ed—

23 (1) by inserting “(1)” before “The Commis-
24 sion”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(2) Notwithstanding paragraph (1), the Commission
4 may from time to time conduct random audits and inves-
5 tigations to ensure voluntary compliance with this Act.
6 The subjects of such audits and investigations shall be se-
7 lected on the basis of criteria established by vote of at
8 least 4 members of the Commission to ensure impartiality
9 in the selection process. This paragraph does not apply
10 to an authorized committee of an eligible Senate candidate
11 subject to audit under section 505(a) or an authorized
12 committee of an eligible House of Representatives can-
13 didate subject to audit under section 605(a).”.

14 **SEC. 607. PROHIBITION OF FALSE REPRESENTATION TO**
15 **SOLICIT CONTRIBUTIONS.**

16 Section 322 of FECA (2 U.S.C. 441h) is amended—

17 (1) by inserting after “SEC. 322.” the follow-
18 ing: “(a)”; and

19 (2) by adding at the end the following:

20 “(b) No person shall solicit contributions by falsely
21 representing himself as a candidate or as a representative
22 of a candidate, a political committee, or a political party.”.

1 **SEC. 608. REGULATIONS RELATING TO USE OF NON-FED-**
2 **ERAL MONEY.**

3 Section 306 of FECA (2 U.S.C. 437c) is amended
4 by adding at the end the following new subsection:

5 “(g) The Commission shall promulgate rules to pro-
6 hibit devices or arrangements which have the purpose or
7 effect of undermining or evading the provisions of this Act
8 restricting the use of non-Federal money to affect Federal
9 elections.”.

10 **TITLE VII—MISCELLANEOUS**

11 **SEC. 701. PROHIBITION OF LEADERSHIP COMMITTEES.**

12 Section 302(e) of FECA (2 U.S.C. 432(e)) is amend-
13 ed—

14 (1) by amending paragraph (3) to read as fol-
15 lows:

16 “(3) No political committee that supports or has sup-
17 ported more than one candidate may be designated as an
18 authorized committee, except that—

19 “(A) a candidate for the office of President
20 nominated by a political party may designate the na-
21 tional committee of such political party as the can-
22 didate’s principal campaign committee, but only if
23 that national committee maintains separate books of
24 account with respect to its functions as a principal
25 campaign committee; and

1 “(B) a candidate may designate a political com-
2 mittee established solely for the purpose of joint
3 fundraising by such candidates as an authorized
4 committee.”; and

5 (2) by adding at the end the following new
6 paragraph:

7 “(6)(A) A candidate for Federal office or any individ-
8 ual holding Federal office may not establish, maintain, or
9 control any political committee other than a principal cam-
10 paign committee of the candidate, authorized committee,
11 party committee, or other political committee designated
12 in accordance with paragraph (3). A candidate for more
13 than one Federal office may designate a separate principal
14 campaign committee for each Federal office.

15 “(B) For one year after the effective date of this
16 paragraph, any such political committee may continue to
17 make contributions. At the end of that period such politi-
18 cal committee shall disburse all funds by one or more of
19 the following means: making contributions to an entity
20 qualified under section 501(c)(3) of the Internal Revenue
21 Code of 1986; making a contribution to the treasury of
22 the United States; contributing to the national, State or
23 local committees of a political party; or making contribu-
24 tions not to exceed \$1,000 to candidates for elective
25 office.”.

1 **SEC. 702. POLLING DATA CONTRIBUTED TO CANDIDATES.**

2 Section 301(8) of FECA (2 U.S.C. 431(8)), as
3 amended by section 314(b), is amended by inserting at
4 the end the following new subparagraph:

5 “(D) A contribution of polling data to a can-
6 didate shall be valued at the fair market value of the
7 data on the date the poll was completed, depreciated
8 at a rate not more than 1 percent per day from such
9 date to the date on which the contribution was
10 made.”.

11 **SEC. 703. SENSE OF THE SENATE THAT CONGRESS SHOULD**

12 **CONSIDER ADOPTION OF A JOINT RESOLU-**
13 **TION PROPOSING AN AMENDMENT TO THE**
14 **CONSTITUTION THAT WOULD EMPOWER CON-**
15 **GRESS AND THE STATES TO SET REASON-**
16 **ABLE LIMITS ON CAMPAIGN EXPENDITURES.**

17 It is the sense of the Senate that Congress should
18 consider adoption of a joint resolution proposing an
19 amendment to the Constitution that would—

20 (1) empower Congress to set reasonable limits
21 on campaign expenditures by, in support of, or in
22 opposition to any candidate in any primary, general,
23 or other election for Federal office; and

24 (2) empower the States to set reasonable limits
25 on campaign expenditures by, in support of, or in

1 opposition to any candidate in any primary, general,
2 or other election for State or local office.

3 **SEC. 704. PERSONAL USE OF CAMPAIGN FUNDS.**

4 Section 313 of FECA (2 U.S.C. 439a) is amended—

5 (1) by inserting “(a)” before “Amounts”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(b) For the purposes of this section, the term ‘per-
9 sonal use’ means the use of funds in a campaign account
10 of a present or former candidate to fulfill a commitment,
11 obligation, or expense of any person that would exist irre-
12 spective of the candidate’s campaign or duties as a holder
13 of Federal office.”.

14 **TITLE VIII—EFFECTIVE DATES;**
15 **AUTHORIZATIONS**

16 **SEC. 801. EFFECTIVE DATE.**

17 Except as otherwise provided in this Act, the amend-
18 ments made by, and the provisions of, this Act shall take
19 effect on the date of the enactment of this Act but shall
20 not apply with respect to activities in connection with any
21 election occurring before January 1, 1996.

22 **SEC. 802. SEVERABILITY.**

23 Except as provided in sections 101(c) and 121(b), if
24 any provision of this Act (including any amendment made
25 by this Act), or the application of any such provision to

1 any person or circumstance, is held invalid, the validity
2 of any other provision of this Act, or the application of
3 such provision to other persons and circumstances, shall
4 not be affected thereby.

5 **SEC. 803. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.**

6 (a) **DIRECT APPEAL TO SUPREME COURT.**—An ap-
7 peal may be taken directly to the Supreme Court of the
8 United States from any interlocutory order or final judg-
9 ment, decree, or order issued by any court ruling on the
10 constitutionality of any provision of this Act or amend-
11 ment made by this Act.

12 (b) **ACCEPTANCE AND EXPEDITION.**—The Supreme
13 Court shall, if it has not previously ruled on the question
14 addressed in the ruling below, accept jurisdiction over, ad-
15 vance on the docket, and expedite the appeal to the great-
16 est extent possible.

○

104TH CONGRESS
1ST SESSION

S. 1219

To reform the financing of Federal elections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 5), 1995

Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. THOMPSON, Mr. PELL, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To reform the financing of Federal elections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Senate Campaign
5 Finance Reform Act of 1995".

6 **SEC. 2. AMENDMENT OF CAMPAIGN ACT; TABLE OF CON-**
7 **TENTS.**

8 (a) AMENDMENT OF FECA.—When used in this Act,
9 the term "FECA" means the Federal Election Campaign
10 Act of 1971 (2 U.S.C. 431 et seq.).

- 1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Amendment of Campaign Act; table of contents.

TITLE I—SENATE ELECTION SPENDING LIMITS AND BENEFITS

Sec. 101. Senate election spending limits and benefits.

Sec. 102. Free broadcast time.

Sec. 103. Broadcast rates and preemption.

Sec. 104. Reduced postage rates.

Sec. 105. Contribution limit for eligible Senate candidates.

TITLE II—REDUCTION OF SPECIAL INTEREST INFLUENCE

Subtitle A—Elimination of Political Action Committees From Federal Election Activities

Sec. 201. Ban on activities of political action committees in Federal elections.

Subtitle B—Provisions Relating to Soft Money of Political Parties

Subtitle C—Soft Money of Persons Other Than Political Parties

Sec. 221. Soft money of persons other than political parties.

Subtitle D—Contributions

Sec. 231. Contributions through intermediaries and conduits.

Subtitle E—Additional Contribution Limits

Sec. 241. Allowable contributions for complying candidates.

Subtitle F—Independent Expenditures

Sec. 251. Clarification of definitions relating to independent expenditures.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Restrictions on use of campaign funds for personal purposes.

Sec. 302. Campaign advertising amendments.

Sec. 303. Filing procedures.

Sec. 304. Audits.

Sec. 305. Limit on congressional use of the franking privilege.

Sec. 306. Authority to seek injunction.

Sec. 307. Severability.

Sec. 308. Expedited review of constitutional issues.

Sec. 309. Reporting Requirements.

Sec. 310. Effective date.

Sec. 311. Regulations.

1 **TITLE I—SENATE ELECTION**
2 **SPENDING LIMITS AND BENE-**
3 **FITS**

4 **SEC. 101. SENATE ELECTION SPENDING LIMITS AND BENE-**
5 **FITS.**

6 (a) IN GENERAL.—FECA is amended by adding at
7 the end the following new title:

8 **“TITLE V—SPENDING LIMITS**
9 **AND BENEFITS FOR SENATE**
10 **ELECTION CAMPAIGNS**

11 **“SEC. 501. CANDIDATES ELIGIBLE TO RECEIVE BENEFITS.**

12 “(a) IN GENERAL.—For purposes of this title, a can-
13 didate is an eligible Senate candidate if the candidate—

14 “(1) meets the primary and general election fil-
15 ing requirements of subsections (c) and (d);

16 “(2) meets the primary and runoff election ex-
17 penditure limits of subsection (b);

18 “(3) meets the threshold contribution require-
19 ments of subsection (e); and

20 “(4) does not exceed the limitation on expendi-
21 tures from personal funds under section 502(a).

22 “(b) PRIMARY AND RUNOFF EXPENDITURE LIM-
23 ITS.—

24 “(1) IN GENERAL.—The requirements of this
25 subsection are met if—

1 “(A) the candidate or the candidate’s au-
2 thorized committees did not make expenditures
3 for the primary election in excess of the lesser
4 of—

5 “(i) 67 percent of the general election
6 expenditure limit under section 502(b); or

7 “(ii) \$2,750,000; and

8 “(B) the candidate and the candidate’s au-
9 thorized committees did not make expenditures
10 for any runoff election in excess of 20 percent
11 of the general election expenditure limit under
12 section 502(b).

13 “(2) INDEXING.—The \$2,750,000 amount
14 under paragraph (1)(A)(ii) shall be increased as of
15 the beginning of each calendar year based on the in-
16 crease in the price index determined under section
17 315(c), except that the base period shall be calendar
18 year 1995.

19 “(c) PRIMARY FILING REQUIREMENTS.—

20 “(1) IN GENERAL.—The requirements of this
21 subsection are met if the candidate files with the
22 Secretary of the Senate a certification that—

23 “(A) the candidate and the candidate’s au-
24 thorized committees—

“(i) will meet the primary and runoff election expenditure limits of subsection (b); and

“(ii) will only accept contributions for the primary and runoff elections which do not exceed such limits;

“(B) the candidate and the candidate’s authorized committees will meet the limitation on expenditures from personal funds under section 502(a); and

“(C) the candidate and the candidate’s authorized committees will meet the general election expenditure limit under section 502(b).

“(2) DEADLINE FOR FILING CERTIFICATION.—

The certification under paragraph (1) shall be filed not later than the date the candidate files as a candidate for the primary election.

“(d) GENERAL ELECTION FILING REQUIREMENTS.—

“(1) IN GENERAL.—The requirements of this subsection are met if the candidate files a certification with the Secretary of the Senate under penalty of perjury that—

“(A) the candidate and the candidate’s authorized committees—

1 “(i) met the primary and runoff elec-
2 tion expenditure limits under subsection
3 (b); and

4 “(ii) did not accept contributions for
5 the primary or runoff election in excess of
6 the primary or runoff expenditure limit
7 under subsection (b), whichever is applica-
8 ble, reduced by any amounts transferred to
9 this election cycle from a preceding election
10 cycle;

11 “(B) at least one other candidate has
12 qualified for the same general election ballot
13 under the law of the State involved;

14 “(C) the candidate and the authorized
15 committees of the candidate—

16 “(i) except as otherwise provided by
17 this title, will not make expenditures that
18 exceed the general election expenditure
19 limit under section 502(b);

20 “(ii) will not accept any contributions
21 in violation of section 315; and

22 “(iii) except as otherwise provided by
23 this title, will not accept any contribution
24 for the general election involved to the ex-
25 tent that such contribution would cause

the aggregate amount of contributions to exceed the sum of the amount of the general election expenditure limit under section 502(b), reduced by any amounts transferred to this election cycle from a previous election cycle and not taken into account under subparagraph (A)(ii); and

“(D) the candidate intends to make use of the benefits provided under section 503.

“(2) DEADLINE FOR FILING CERTIFICATION.—

The certification under paragraph (1) shall be filed not later than 7 days after the earlier of—

“(A) the date the candidate qualifies for the general election ballot under State law; or

“(B) if under State law, a primary or runoff election to qualify for the general election ballot occurs after September 1, the date the candidate wins the primary or runoff election.

“(e) THRESHOLD CONTRIBUTION REQUIREMENTS.—

“(1) IN GENERAL.—The requirements of this subsection are met if the candidate and the candidate’s authorized committees have received allowable contributions during the applicable period in an amount at least equal to the lesser of—

1 “(A) 10 percent of the general election ex-
2 penditure limit under section 502(b); or

3 “(B) \$250,000.

4 “(2) DEFINITIONS.—For purposes of this
5 Act—

6 “(A) the term ‘allowable contributions’
7 means contributions that are made as gifts of
8 money by an individual pursuant to a written
9 instrument identifying such individual as the
10 contributor, except that such term shall not in-
11 clude contributions from individuals residing
12 outside the candidate’s State to the extent such
13 contributions exceed 40 percent of the aggre-
14 gate allowable contributions (without regard to
15 this subparagraph) received by the candidate
16 during the applicable period; and

17 “(B) the term ‘applicable period’ means—

18 “(i) the period beginning on January
19 1 of the calendar year preceding the cal-
20 endar year of the general election involved
21 and ending on the date on which the cer-
22 tification under subsection (c)(2) is filed by
23 the candidate; or

24 “(ii) in the case of a special election
25 for the office of United States Senator, the

1 period beginning on the date the vacancy
2 in such office occurs and ending on the
3 date of the general election.

4 **"SEC. 502. LIMITATION ON EXPENDITURES.**

5 **"(a) LIMITATION ON USE OF PERSONAL FUNDS.—**

6 **"(1) IN GENERAL.—**The aggregate amount of
7 expenditures that may be made during an election
8 cycle by an eligible Senate candidate or such can-
9 didate's authorized committees from the sources de-
10 scribed in paragraph (2) shall not exceed the lesser
11 of—

12 **"(A)** 10 percent of the general election ex-
13 penditure limit under subsection (b); or

14 **"(B)** \$250,000.

15 **"(2) SOURCES.—**A source is described in this
16 subsection if it is—

17 **"(A)** personal funds of the candidate and
18 members of the candidate's immediate family;
19 or

20 **"(B)** personal loans incurred by the can-
21 didate and members of the candidate's imme-
22 diate family.

23 **"(3) AMENDED DECLARATION.—**A candidate
24 who—

“(A) declares, pursuant to this Act, that the candidate does not intend to expend funds described in paragraph (2) in excess of \$250,000; and

“(B) subsequently changes such declaration or expends such funds in excess of that amount,

shall file an amended declaration with the Commission and notify all other candidates for the same office not later than 24 hours after changing such declaration or exceeding such limits, whichever first occurs, by sending a notice by certified mail, return receipt requested.

“(b) GENERAL ELECTION EXPENDITURE LIMIT.—

“(1) IN GENERAL.—Except as otherwise provided in this title, the aggregate amount of expenditures for a general election by an eligible Senate candidate and the candidate’s authorized committees shall not exceed the lesser of—

“(A) \$5,500,000; or

“(B) the greater of—

“(i) \$950,000; or

“(ii) \$400,000; plus

1 “(I) 30 cents multiplied by the
2 voting age population not in excess of
3 4,000,000; and

4 “(II) 25 cents multiplied by the
5 voting age population in excess of
6 4,000,000.

7 “(2) EXCEPTION.—In the case of an eligible
8 Senate candidate in a State that has not more than
9 1 transmitter for a commercial Very High Fre-
10 quency (VHF) television station licensed to operate
11 in that State, paragraph (1)(B)(ii) shall be applied
12 by substituting—

13 “(A) ‘80 cents’ for ‘30 cents’ in subclause
14 (I); and

15 “(B) ‘70 cents’ for ‘25 cents’ in subclause
16 (II).

17 “(3) INDEXING.—The amount otherwise deter-
18 mined under paragraph (1) for any calendar year
19 shall be increased by the same percentage as the
20 percentage increase for such calendar year under
21 section 501(b)(2).

22 “(c) PAYMENT OF TAXES.—The limitation under
23 subsection (b) shall not apply to any expenditure for Fed-
24 eral, State, or local taxes with respect to earnings on con-
25 tributions raised.

1 “(d) SPECIAL EXCEPTION FOR COMPLYING CAN-
2 DIDATES RUNNING AGAINST NON-COMPLYING CAN-
3 DIDATES.—If in the case of an election with more than
4 one candidate where one or more candidates who have re-
5 ceived contributions in excess of 10 percent of the general
6 election limits contained in this Act or has expended per-
7 sonal funds in excess of 10 percent of the general election
8 limits contained in this Act choose not to comply with the
9 provisions of this Act or violate the limitations on expendi-
10 tures contained in this Act, such limitations contained in
11 section 502(b) of this Act for the complying candidate(s)
12 shall be increased by 20 percent.”

13 **“SEC. 503. BENEFITS ELIGIBLE CANDIDATES ENTITLED TO**
14 **RECEIVE.**

15 “An eligible Senate candidate shall be entitled to
16 receive—

17 “(1) the broadcast media rates provided under
18 section 315(b) of the Communications Act of 1934;

19 “(2) the free broadcast time provided under
20 section 315(c) of such Act; and

21 “(3) the reduced postage rates provided in sec-
22 tion 3626(e) of title 39, United States Code.

23 **“SEC. 504. CERTIFICATION BY COMMISSION.**

24 “(a) IN GENERAL.—Not later than 48 hours after
25 an eligible candidate qualifies for a general election ballot,

1 the Commission shall certify the candidate's eligibility for
2 free broadcast time under section 315(b)(2) of the Com-
3 munications Act of 1934. The Commission shall revoke
4 such certification if it determines a candidate fails to con-
5 tinue to meet the requirements of this title.

6 “(b) DETERMINATIONS BY COMMISSION.—All deter-
7 minations (including certifications under subsection (a))
8 made by the Commission under this title shall be final,
9 except to the extent that they are subject to examination
10 and audit by the Commission under section 505.

11 **“SEC. 505. REPAYMENTS; ADDITIONAL CIVIL PENALTIES.**

12 “(a) EXCESS PAYMENTS; REVOCATION OF STA-
13 TUS.—If the Commission revokes the certification of a
14 candidate as an eligible Senate candidate under section
15 504(a), the Commission shall notify the candidate, and the
16 candidate shall pay an amount equal to the value of the
17 benefits received under this title.

18 “(b) MISUSE OF BENEFITS.—If the Commission de-
19 termines that any benefit made available to an eligible
20 Senate candidate under this title was not used as provided
21 for in this title, or that a candidate has violated any of
22 the spending limits contained in this Act, the Commission
23 shall so notify the candidate and the candidate shall pay
24 an amount equal to the value of such benefit.”.

1 (b) TRANSITION PERIOD.—Expenditures made be-
2 fore January 1, 1997, shall not be counted as expenditures
3 for purposes of the limitations contained in the amend-
4 ment made by subsection (a).

5 **SEC. 102. FREE BROADCAST TIME.**

6 (a) IN GENERAL.—Section 315 of the Communica-
7 tions Act of 1934 (47 U.S.C. 315) is amended—

8 (1) in subsection (a)—

9 (A) by striking “within the meaning of this
10 subsection” and inserting “within the meaning
11 of this subsection and subsection (c)”;

12 (B) by redesignating subsections (c) and
13 (d) as subsections (d) and (e), respectively; and

14 (C) by inserting immediately after sub-
15 section (b) the following new subsection:

16 “(e)(1) An eligible Senate candidate who has quali-
17 fied for the general election ballot shall be entitled to re-
18 ceive a total of 30 minutes of free broadcast time from
19 broadcasting stations within the State or an adjacent
20 State.

21 “(2)(A) Unless a candidate elects otherwise, the
22 broadcast time made available under this subsection shall
23 be between 6:00 p.m. and 10:00 p.m. on any day that falls
24 on Monday through Friday.

1 “(B) Except as otherwise provided in this Act, a can-
2 didate may use such time as the candidate elects except
3 that such time may not be used in intervals of less than
4 30 seconds or more than 5 minutes.

5 “(C) A candidate may not request more than 15 min-
6 utes of free broadcast time be aired by any one broadcast-
7 ing station.

8 “(3)(A) In the case of an election among more than
9 2 candidates, the broadcast time provided under para-
10 graph (1) shall be allocated as follows:

11 “(i) The amount of broadcast time that shall be
12 provided to the candidate of a minor party shall be
13 equal to the number of minutes allocable to the
14 State multiplied by the percentage of the number of
15 popular votes received by the candidate of that party
16 in the preceding general election for the Senate in
17 the State (or if subsection (d)(4)(B) applies, the per-
18 centage determined under such subsection).

19 “(ii) The amount of broadcast time remaining
20 after assignment of broadcast time to minor party
21 candidates under clause (i) shall be allocated equally
22 between the major party candidates.

23 “(B) In the case of an election where only 1 candidate
24 qualifies to be on the general election ballot, no time shall

1 be required to be provided by a licensee under this sub-
2 section.

3 “(4) The Federal Election Commission shall by regu-
4 lation exempt from the requirements of this subsection—

5 “(A) a licensee whose signal is broadcast sub-
6 stantially nationwide; and

7 “(B) a licensee that establishes that such re-
8 quirements would impose a significant economic
9 hardship on the licensee.”; and

10 (2) in subsection (d), as redesignated—

11 (A) by striking “and” at the end of para-
12 graph (1);

13 (B) by striking the period at the end of
14 paragraph (2) and inserting a semicolon; and

15 (C) by adding at the end the following new
16 paragraphs:

17 “(3) the term ‘major party’ means, with respect
18 to an election for the United States Senate in a
19 State, a political party whose candidate for the Unit-
20 ed States Senate in the preceding general election
21 for the Senate in that State received, as a candidate
22 of that party, 25 percent or more of the number of
23 popular votes received by all candidates for the Sen-
24 ate;

1 “(4) the term ‘minor party’ means, with respect
2 to an election for the United States Senate in a
3 State, a political party—

4 “(A) whose candidate for the United
5 States Senate in the preceding general election
6 for the Senate in that State received 5 percent
7 or more but less than 25 percent of the number
8 of popular votes received by all candidates for
9 the Senate; or

10 “(B) whose candidate for the United
11 States Senate in the current general election for
12 the Senate in that State has obtained the signa-
13 tures of at least 5 percent of the State’s reg-
14 istered voters, as determined by the chief voter
15 registration official of the State, in support of
16 a petition for an allocation of free broadcast
17 time under this subsection; and

18 “(5) the term ‘Senate election cycle’ means,
19 with respect to an election to a seat in the United
20 States Senate, the 6-year period ending on the date
21 of the general election for that seat.”.

22 (b) **EFFECTIVE DATE.**—The amendments made by
23 this section shall apply to general elections occurring after
24 December 31, 1996 (and the election cycles relating there-
25 to).

1 **SEC. 103. BROADCAST RATES AND PREEMPTION.**

2 (a) **BROADCAST RATES.**—Section 315(b) of the Com-
3 munications Act of 1934 (47 U.S.C. 315(b)) is amended—

4 (1) by striking “(b) The changes” and inserting
5 “(b)(1) The changes”;

6 (2) by redesignating paragraphs (1) and (2) as
7 subparagraphs (A) and (B), respectively;

8 (3) in paragraph (1)(A), as redesignated—

9 (A) by striking “forty-five” and inserting
10 “30”; and

11 (B) by striking “lowest unit charge of the
12 station for the same class and amount of time
13 for the same period” and inserting “lowest
14 charge of the station for the same amount of
15 time for the same period on the same date”;
16 and

17 (4) by adding at the end the following new
18 paragraph:

19 “(2) In the case of an eligible Senate candidate (as
20 described in section 501(a) of the Federal Election Cam-
21 paign Act), the charges for the use of a television broad-
22 casting station during the 30-day period and 60-day pe-
23 riod referred to in paragraph (1)(A) shall not exceed 50
24 percent of the lowest charge described in paragraph
25 (1)(A).”.

1 (b) PREEMPTION; ACCESS.—Section 315 of such Act
2 (47 U.S.C. 315), as amended by section 102(a), is amend-
3 ed—

4 (1) by redesignating subsections (d) and (e) as
5 redesignated, as subsections (e) and (f), respectively;
6 and

7 (2) by inserting immediately after subsection
8 (e) the following subsection:

9 “(d)(1) Except as provided in paragraph (2), a li-
10 censee shall not preempt the use, during any period speci-
11 fied in subsection (b)(1)(A), of a broadcasting station by
12 an eligible Senate candidate who has purchased and paid
13 for such use pursuant to subsection (b)(2).

14 “(2) If a program to be broadcast by a broadcasting
15 station is preempted because of circumstances beyond the
16 control of the broadcasting station, any candidate adver-
17 tising spot scheduled to be broadcast during that program
18 may also be preempted.”.

19 (c) REVOCATION OF LICENSE FOR FAILURE TO PER-
20 MIT ACCESS.—Section 312(a)(7) of the Communications
21 Act of 1934 (47 U.S.C. 312(a)(7)) is amended—

22 (1) by striking “or repeated”;

23 (2) by inserting “or cable system” after “broad-
24 casting station”; and

(3) by striking “his candidacy” and inserting “the candidacy of such person, under the same terms, conditions, and business practices as apply to its most favored advertiser”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to the general elections occurring after December 31, 1995 (and the election cycles relating thereto).

SEC. 104. REDUCED POSTAGE RATES.

(a) **IN GENERAL.**—Section 3626(e) of title 39, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking “and the National” and inserting “the National”; and

(ii) by inserting before the semicolon the following: “, and, subject to paragraph (3), the principal campaign committee of an eligible Senate candidate;”;

(B) in subparagraph (B), by striking “and” after the semicolon;

(C) in subparagraph (C), by striking the period and inserting a semicolon; and

(D) by adding after subparagraph (C) the following new subparagraphs:

1 “(D) the term ‘principal campaign committee’
2 has the meaning given such term in section 301 of
3 the Federal Election Campaign Act of 1971; and

4 “(E) the term ‘eligible Senate candidate’ has
5 the meaning given such term in section 501(a) of
6 the Federal Election Campaign Act of 1971.”; and

7 (2) by adding after paragraph (2) the following
8 new paragraph:

9 “(3) The rate made available under this subsection
10 with respect to an eligible Senate candidate shall apply
11 only to that number of pieces of mail equal to 2 times
12 the number of individuals in the voting age population (as
13 certified under section 315(e) of such Act) of the State.”.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to the general elections occurring
16 after December 31, 1996 (and the election cycles relating
17 thereto).

18 **SEC. 105. CONTRIBUTION LIMIT FOR ELIGIBLE SENATE**
19 **CANDIDATES.**

20 Section 315(a)(1) of FECA (2 U.S.C. 441a(a)(1)) is
21 amended—

22 (1) by inserting “except as provided in subpara-
23 graph (B),” before “to” in subparagraph (A);

24 (2) by redesignating subparagraphs (B) and
25 (C) as subparagraphs (C) and (D), respectively; and

(3) by inserting immediately after subparagraph (A) the following new subparagraph:

“(B) to any eligible Senate candidate and the authorized political committees of such candidate with respect to any election for the office of United States Senator (if any other Senate candidate chooses not to comply with the expenditure limits contained in this Act and has received contributions in excess of 10 percent of the general election limits contained in this Act or has expended personal funds in excess of 10 percent of the general election limits contained in this Act) which, in the aggregate, exceed \$2,000;”.

**TITLE II—REDUCTION OF
SPECIAL INTEREST INFLUENCE
Subtitle A—Elimination of Political
Action Committees From Federal
Election Activities**

SEC. 201. BAN ON ACTIVITIES OF POLITICAL ACTION COMMITTEES IN FEDERAL ELECTIONS.

(a) IN GENERAL.—Title III of FECA (2 U.S.C. 301 et seq.) is amended by adding at the end the following new section:

1 "BAN ON FEDERAL ELECTION ACTIVITIES BY POLITICAL
2 ACTION COMMITTEES

3 "SEC. 324. Notwithstanding any other provision of
4 this Act, no person other than an individual or a political
5 committee may make contributions, solicit or receive con-
6 tributions, or make expenditures for the purpose of influ-
7 encing an election for Federal office."

8 (b) DEFINITION OF POLITICAL COMMITTEE.—(1)
9 Section 301(4) of FECA (2 U.S.C. 431(4)) is amended
10 to read as follows:

11 "(4) The term 'political committee' means—

12 "(A) the principal campaign committee of
13 a candidate;

14 "(B) any national, State, or district com-
15 mittee of a political party, including any subor-
16 dinate committee thereof;

17 "(C) any local committee of a political
18 party that—

19 "(i) receives contributions aggregating
20 in excess of \$5,000 during a calendar year;

21 "(ii) makes payments exempted from
22 the definition of contribution or expendi-
23 ture under paragraph (8) or (9) aggregat-
24 ing in excess of \$5,000 during a calendar
25 year; or

1 “(iii) makes contributions or expendi-
2 tures aggregating in excess of \$1,000 dur-
3 ing a calendar year; and

4 “(D) any committee jointly established by
5 a principal campaign committee and any com-
6 mittee described in subparagraph (B) or (C) for
7 the purpose of conducting joint fundraising ac-
8 tivities.”.

9 (2) Section 316(b)(2) of FECA (2 U.S.C.
10 441b(b)(2)) is amended—

11 (A) by inserting “or” after “subject;”;

12 (B) by striking “and their families; and” and
13 inserting “and their families.”; and

14 (C) by striking subparagraph (C).

15 (c) CANDIDATE’S COMMITTEES.—(1) Section 315(a)
16 of FECA (2 U.S.C. 441a(a)) is amended by adding at the
17 end the following new paragraph:

18 “(9) For the purposes of the limitations provided by
19 paragraphs (1) and (2), any political committee that is
20 established, financed, maintained, or controlled, directly or
21 indirectly, by any candidate or Federal officeholder shall
22 be deemed to be an authorized committee of such can-
23 didate or officeholder.”.

24 (2) Section 302(e)(3) of FECA (2 U.S.C. 432) is
25 amended to read as follows:

1 “(3) No political committee that supports, or has
2 supported, more than one candidate may be designated as
3 an authorized committee, except that—

4 “(A) a candidate for the office of President
5 nominated by a political party may designate the na-
6 tional committee of such political party as the can-
7 didate’s principal campaign committee, if that na-
8 tional committee maintains separate books of ac-
9 count with respect to its functions as a principal
10 campaign committee; and

11 “(B) a candidate may designate a political com-
12 mittee established solely for the purpose of joint
13 fundraising by such candidates as an authorized
14 committee.”.

15 (d) RULES APPLICABLE WHEN BAN NOT IN EF-
16 FECT.—(1) For purposes of FECA, during any period be-
17 ginning after the effective date in which the limitation
18 under section 324 of that Act (as added by subsection (a))
19 is not in effect—

20 (A) the amendments made by subsections (a),
21 (b), and (c) shall not be in effect;

22 (B) it shall be unlawful for a multicandidate
23 political committee, intermediary, or conduit (as that
24 term is defined in section 315(a)(8) of FECA, as
25 amended by section 231 of this Act), to make a con-

1 tribution to a candidate for election, or nomination
2 for election, to Federal office (or an authorized com-
3 mittee) to the extent that the making or accepting
4 of the contribution will cause the amount of con-
5 tributions received by the candidate and the can-
6 didate's authorized committees from multicandidate
7 political committees to exceed 20 percent of the ag-
8 gregate Federal election spending limits applicable
9 to the candidate for the election cycle; and

10 (C) it shall be unlawful for a political commit-
11 tee, intermediary, or conduit, as that term is defined
12 in section 315(a)(8) of FECA (as amended by sec-
13 tion 231 of this Act), to make a contribution to a
14 candidate for election, or a nomination for an elec-
15 tion, to Federal office (or an authorized committee
16 of such candidate) in excess of the amount an indi-
17 vidual is allowed to give directly to a candidate or
18 a candidate's authorized committee.

19 (2) A candidate or authorized committee that receives
20 a contribution from a multicandidate political committee
21 in excess of the amount allowed under paragraph (1)(B)
22 shall return the amount of such excess contribution to the
23 contributor.

1 Subtitle B—Provisions Relating to **2 Soft Money of Political Parties**

3 SEC. 211.

4 A national committee of a political party, including
5 the national congressional campaign committees of a polit-
6 ical party, and any officers or agents of such party com-
7 mittees, shall not solicit or receive any contributions, do-
8 nations, or transfers of funds, or spend any funds, not
9 subject to the limitations, prohibitions, and reporting re-
10 quirements of this Act. This provision shall apply to any
11 entity that is established, financed, maintained or con-
12 trolled by a national committee of a political party, includ-
13 ing the national congressional campaign committees of a
14 political party, and any officer or agents of such party
15 committees, other than an entity that is regulated by sec-
16 tion (2) below.

17 SEC. 212.

18 (a) Any amount expended or disbursed by a State,
19 district, or local committee of a political party, during a
20 calendar year in which a Federal election is held, for any
21 activity which might affect the outcome of a Federal elec-
22 tion, including but not limited to any voter registration
23 and get-out-the-vote activity, any generic campaign activ-
24 ity, and any communication that identifies a Federal can-
25 didate (regardless of whether a State or local candidate

1 is also mentioned or identified) shall be made from funds
2 subject to the limitations, prohibitions and reporting re-
3 quirements of this Act.

4 (b) Paragraph (a) shall not apply to expenditures or
5 disbursements made by a State, district or local committee
6 of a political party for—

7 (1) a contribution to a candidate other than for
8 Federal office, provided that such contribution is not
9 designated or otherwise earmarked to pay for activi-
10 ties described in subparagraph (a) above;

11 (2) the costs of a State or district/local political
12 convention;

13 (3) the non-Federal share of a State, district or
14 local party committee's administrative and overhead
15 expenses (but not including the compensation in any
16 month of any individual who spends more than 20
17 percent of his or her time on activity during such
18 month which may affect the outcome of a Federal
19 election). For purposes of this provision, the non-
20 federal share of a party committee's administrative
21 and overhead expenses shall be determined by apply-
22 ing the ratio of the non-Federal disbursements to
23 the total Federal expenditures and non-Federal dis-
24 bursements made by the committee during the pre-
25 vious presidential election year to the committee's

1 administrative and overhead expenses in the election
2 year in question;

3 (4) the costs of grassroots campaign materials,
4 including buttons, bumperstickers, and yard signs,
5 which material solely name or depict a State or local
6 candidate; and

7 (5) the cost of any campaign activity conducted
8 solely on behalf of a clearly identified State or local
9 candidate, provided that such activity is not covered
10 by subparagraph (a) above.

11 (c) Any amount spent by a national, State, district
12 or local committee or entity of a political party to raise
13 funds that are used, in whole or in part, to pay the costs
14 of any activity covered by paragraph 2(a) above shall be
15 made from funds subject to the limitations, prohibitions,
16 and reporting requirements of this Act.

17 This provision shall apply to any entity that is estab-
18 lished, financed, maintained, or controlled by a State, dis-
19 trict or local committee of a political party or any agent
20 or officer of such party committee in the same manner
21 as it applies to that committee.

22 **SEC. 213.**

23 No national, State, district or local committee of a
24 political party shall solicit any funds for or make any do-

1 nations to any organization that is exempt from Federal
2 taxation under 26 U.S.C. 501(c).

3 **SEC. 214.**

4 No candidate for Federal office, individual holding
5 Federal office, or any agent of such candidate or office-
6 holder, may solicit or receive any funds in connection with
7 any Federal election unless such funds are subject to the
8 limitations, prohibitions and reporting requirements of
9 this Act; This provision shall not apply to the solicitation
10 or receipt of funds by an individual who is a candidate
11 for a non-Federal office if such activity is permitted under
12 State law for such individual's non-Federal campaign com-
13 mittee.

14 **SEC. 215. REPORTING REQUIREMENTS.**

15 (a) **REPORTING REQUIREMENTS.**—Section 304 of
16 FECA (2 U.S.C. 434) is amended by adding at the end
17 the following new subsection:

18 “(d) **POLITICAL COMMITTEES.**—(1) The national
19 committee of a political party, any congressional campaign
20 committee of a political party, and any subordinate com-
21 mittee of either, shall report all receipts and disburse-
22 ments during the reporting period, whether or not in con-
23 nection with an election for Federal office.

24 “(2) A political committee (not described in para-
25 graph (1)) to which section 325 applies shall report all

1 receipts and disbursements including separate schedules
2 for receipts and disbursements for any State Party Grass-
3 roots Fund described in section 301(21).

4 “(3) Any political committee to which section 325 ap-
5 plies shall include in its report under paragraph (1) or
6 (2) the amount of any transfer described in section
7 325(d)(2) and shall itemize such amounts to the extent
8 required by subsection (b)(3)(A).

9 “(4) Any political committee to which paragraph (1)
10 or (2) does not apply shall report any receipts or disburse-
11 ments that are used in connection with a Federal election.

12 “(5) If a political committee has receipts or disburse-
13 ments to which this subsection applies from any person
14 aggregating in excess of \$200 for any calendar year, the
15 political committee shall separately itemize its reporting
16 for such person in the same manner as required in sub-
17 section (b) (3)(A), (5), or (6).

18 “(6) Reports required to be filed under this sub-
19 section shall be filed for the same time periods required
20 for political committees under subsection (a).”.

21 (b) REPORT OF EXEMPT CONTRIBUTIONS.—Section
22 301(8) of FECA (2 U.S.C. 431(8)) is amended by insert-
23 ing at the end the following:

24 “(C) The exclusion provided in subpara-
25 graph (B)(viii) shall not apply for purposes of

1 any requirement to report contributions under
2 this Act, and all such contributions aggregating
3 in excess of \$200 shall be reported.”.

4 (c) REPORTS BY STATE COMMITTEES.—Section 304
5 of FECA (2 U.S.C. 434), as amended by subsection (a),
6 is amended by adding at the end the following new sub-
7 section:

8 “(e) FILING OF STATE REPORTS.—In lieu of any re-
9 port required to be filed by this Act, the Commission may
10 allow a State committee of a political party to file with
11 the Commission a report required to be filed under State
12 law if the Commission determines such reports contain
13 substantially the same information.”.

14 (d) OTHER REPORTING REQUIREMENTS.—

15 (1) AUTHORIZED COMMITTEES.—Section
16 304(b)(4) of FECA (2 U.S.C. 434(b)(4)) is amend-
17 ed—

18 (A) by striking “and” at the end of sub-
19 paragraph (H);

20 (B) by inserting “and” at the end of sub-
21 paragraph (I); and

22 (C) by adding at the end the following new
23 subparagraph:

24 “(J) in the case of an authorized commit-
25 tee, disbursements for the primary election, the

1 general election, and any other election in which
2 the candidate participates;”.

3 (2) NAMES AND ADDRESSES.—Section
4 304(b)(5)(A) of FECA (2 U.S.C. 434(b)(5)(A)) is
5 amended—

6 (A) by striking “within the calendar year”;
7 and

8 (B) by inserting “, and the election to
9 which the operating expenditure relates” after
10 “operating expenditure”.

11 **Subtitle C—Soft Money of Persons** 12 **Other Than Political Parties**

13 **SEC. 221. SOFT MONEY OF PERSONS OTHER THAN POLITI-** 14 **CAL PARTIES.**

15 Section 304 of FECA (2 U.S.C. 434), as amended
16 by section 215(c), is amended by adding at the end the
17 following new subsection:

18 “(f) ELECTION ACTIVITY OF PERSONS OTHER THAN
19 POLITICAL PARTIES.—(1)(A)(i) If any person to which
20 section 325 does not apply makes (or obligates to make)
21 disbursements for activities described in section 325(b) in
22 excess of \$2,000, such person shall file a statement—

23 “(I) on or before the date that is 48 hours be-
24 fore the disbursements (or obligations) are made; or

1 “(II) in the case of disbursements (or obliga-
2 tions) that are required to be made within 14 days
3 of the election, on or before such 14th day.

4 “(ii) An additional statement shall be filed each time
5 additional disbursements aggregating \$2,000 are made (or
6 obligated to be made) by a person described in clause (i).

7 “(B) This paragraph shall not apply to—

8 “(i) a candidate or a candidate’s authorized
9 committees; or

10 “(ii) an independent expenditure (as defined in
11 section 301(17)).

12 “(2) Any statement under this section shall be filed
13 with the Secretary of the Senate or the Clerk of the House
14 of Representatives, and the Secretary of State (or equiva-
15 lent official) of the State involved, as appropriate, and
16 shall contain such information as the Commission shall
17 prescribe, including whether the disbursement is in sup-
18 port of, or in opposition to, 1 or more candidates or any
19 political party. The Secretary of the Senate or Clerk of
20 the House of Representatives shall, as soon as possible
21 (but not later than 24 hours after receipt), transmit a
22 statement to the Commission. Not later than 48 hours
23 after receipt, the Commission shall transmit the statement
24 to—

1 “(A) the candidates or political parties involved;
2 or

3 “(B) if the disbursement is not in support of,
4 or in opposition to, a candidate or political party,
5 the State committees of each political party in the
6 State involved.

7 “(3) The Commission may make its own determina-
8 tion that disbursements described in paragraph (1) have
9 been made or are obligated to be made. The Commission
10 shall notify the candidates or political parties described
11 in paragraph (2) not later than 24 hours after its deter-
12 mination.”.

13 **Subtitle D—Contributions**

14 **SEC. 231. CONTRIBUTIONS THROUGH INTERMEDIARIES** 15 **AND CONDUITS.**

16 Section 315(a)(8) of FECA (2 U.S.C. 441a(a)(8)) is
17 amended to read as follows:

18 “(8) For the purposes of this subsection:

19 “(A) Contributions made by a person, ei-
20 ther directly or indirectly, to or on behalf of a
21 particular candidate, including contributions
22 that are in any way earmarked or otherwise di-
23 rected through an intermediary or conduit to a
24 candidate, shall be treated as contributions
25 from the person to the candidate. If a contribu-

tion is made to a candidate through an intermediary or conduit, the intermediary or conduit shall report the original source and the intended recipient of the contribution to the Commission and the intended recipient.

“(B) Contributions made directly or indirectly by a person to or on behalf of a particular candidate through an intermediary or conduit, including contributions arranged to be made by an intermediary or conduit, shall be treated as contributions from the intermediary or conduit to the candidate if—

“(i) the contributions made through the intermediary or conduit are in the form of a check or other negotiable instrument made payable to the intermediary or conduit rather than the intended recipient; or

“(ii) the intermediary or conduit is—

“(I) a political committee, a political party, or an officer, employee, or agent of either;

“(II) a person whose activities are required to be reported under section 308 of the Federal Regulation of Lobbying Act (2 U.S.C. 267), the

1 Foreign Agents Registration Act of
2 1938 (22 U.S.C. 611 et seq.), or any
3 successor Federal law requiring a per-
4 son who is a lobbyist or foreign agent
5 to report the activities of such person;

6 “(III) a person who is prohibited
7 from making contributions under sec-
8 tion 316 or a partnership; or

9 “(IV) an officer, employee, or
10 agent of a person described in
11 subclause (II) or (III) acting on be-
12 half of such person.

13 “(C) The term ‘contributions arranged to
14 be made’ includes—

15 “(i)(I) contributions delivered directly
16 or indirectly to a particular candidate or
17 the candidate’s authorized committee or
18 agent by the person who facilitated the
19 contribution; and

20 “(II) contributions made directly or
21 indirectly to a particular candidate or the
22 candidate’s authorized committee or agent
23 that are provided at a fundraising event
24 sponsored by an intermediary or conduit
25 described in subparagraph (B);

1 (D) This paragraph shall not prohibit—

2 “(i) fundraising efforts for the benefit
3 of a candidate that are conducted by an-
4 other candidate or Federal officeholder; or

5 “(ii) the solicitation by an individual
6 using the individual’s resources and acting
7 in the individual’s own name of contribu-
8 tions from other persons in a manner not
9 described in paragraphs (B) and (C).”.

10 **Subtitle E—Additional Prohibitions**
11 **on Contributions**

12 **SEC. 241. ALLOWABLE CONTRIBUTIONS FOR COMPLYING**
13 **CANDIDATES.**

14 For the purposes of this Act, in order for a candidate
15 to be considered to be in compliance with the spending
16 limits contained in this Act, not less than 60 percent of
17 the total dollar amount of all contributions from individ-
18 uals to a candidate or a candidate’s authorized committee,
19 not including any expenditures, contributions or loans
20 made by the candidate, shall come from individuals legally
21 residing in the candidate’s State.

1 **Subtitle F—Independent**
2 **Expenditures**

3 **SEC. 251. CLARIFICATION OF DEFINITIONS RELATING TO**
4 **INDEPENDENT EXPENDITURES.**

5 (a) INDEPENDENT EXPENDITURE DEFINITION
6 AMENDMENT.—Section 301 of FECA (2 U.S.C. 431) is
7 amended by striking paragraphs (17) and (18) and insert-
8 ing the following:

9 “(17)(A) The term ‘independent expenditure’ means
10 an expenditure that—

11 “(i) contains express advocacy; and

12 “(ii) is made without the participation or co-
13 operation of, or without the consultation of, a can-
14 didate or a candidate’s representative.

15 “(B) The following shall not be considered an inde-
16 pendent expenditure:

17 “(i) An expenditure made by—

18 “(I) an authorized committee of a can-
19 didate for Federal office, or

20 “(II) a political committee of a political
21 party.

22 “(ii) An expenditure if there is any arrange-
23 ment, coordination, or direction with respect to the
24 expenditure between the candidate or the candidate’s
25 agent and the person making the expenditure.

1 “(iii) An expenditure if, in the same election
2 cycle, the person making the expenditure is or has
3 been—

4 “(I) authorized to raise or expend funds on
5 behalf of the candidate or the candidate’s au-
6 thorized committees; or

7 “(II) serving as a member, employee, or
8 agent of the candidate’s authorized committees
9 in an executive or policymaking position.

10 “(iv) An expenditure if the person making the
11 expenditure has advised or counseled the candidate
12 or the candidate’s agents at any time on the can-
13 didate’s plans, projects, or needs relating to the can-
14 didate’s pursuit of nomination for election, or elec-
15 tion, to Federal office, in the same election cycle, in-
16 cluding any advice relating to the candidate’s deci-
17 sion to seek Federal office.

18 “(v) An expenditure if the person making the
19 expenditure retains the professional services of any
20 individual or other person also providing services in
21 the same election cycle to the candidate in connec-
22 tion with the candidate’s pursuit of nomination for
23 election, or election, to Federal office, including any
24 services relating to the candidate’s decision to seek
25 Federal office. For purposes of this clause, the term

1 'professional services' shall include any services
2 (other than legal and accounting services solely for
3 purposes of ensuring compliance with any Federal
4 law) in support of any candidate's or candidates'
5 pursuit of nomination for election, or election, to
6 Federal office.

7 For purposes of this subparagraph, the person making the
8 expenditure shall include any officer, director, employee,
9 or agent of such person.

10 "(18)(A) The term 'express advocacy' means when a
11 communication is taken as a whole and with limited ref-
12 erence to external events, an expression of support for or
13 opposition to a specific candidate, to a specific group of
14 candidates, or to candidates of a particular political party.

15 "(B) The term 'expression of support for or opposi-
16 tion to' includes a suggestion to take action with respect
17 to an election, such as to vote for or against, make con-
18 tributions to, or participate in campaign activity, or to re-
19 frain from taking action."

20 (b) CONTRIBUTION DEFINITION AMENDMENT.—Sec-
21 tion 301(8)(A) of FECA (2 U.S.C. 431(8)(A)) is amend-
22 ed—

23 (1) in clause (i), by striking "or" after the
24 semicolon at the end;

(2) in clause (ii), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new clause:

“(iii) any payment or other transaction referred to in paragraph (17)(A)(i) that is not an independent expenditure under paragraph (17).”.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR PERSONAL PURPOSES.

(a) RESTRICTIONS ON USE OF CAMPAIGN FUNDS.—
Title III of FECA (2 U.S.C. 431 et seq.), as amended by section 213(a), is amended by adding at the end the following new section:

“RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR PERSONAL PURPOSES

“SEC. 326. (a) An individual who receives contributions as a candidate for Federal office—

“(1) shall use such contributions only for legitimate and verifiable campaign expenses; and

“(2) shall not use such contributions for any inherently personal purpose.

“(b) As used in this subsection—

1 “(1) the term ‘campaign expenses’ means ex-
2 penses attributable solely to bona fide campaign pur-
3 poses; and

4 “(2) the term ‘inherently personal purpose’
5 means a purpose that, by its nature, confers a per-
6 sonal benefit, including a home mortgage rent or
7 utility payment, clothing purchase, noncampaign
8 automobile expense, country club membership, vaca-
9 tion, or trip of a noncampaign nature, household
10 food items, tuition payment, admission to a sporting
11 event, concert, theatre or other form of entertain-
12 ment not associated with a campaign, dues, fees, or
13 contributions to a health club or recreational facility
14 and any other inherently personal living expense as
15 determined under the regulations promulgated pur-
16 suant to section 302(b) of the Senate Campaign
17 Spending Limit and Election Reform Act of 1995.”.

18 (b) REGULATIONS.—Not later than 90 days after the
19 date of enactment of this Act, the Federal Election Com-
20 mission shall promulgate regulations consistent with this
21 Act to implement subsection (a). Such regulations shall
22 apply to all contributions possessed by an individual on
23 the date of enactment of this Act.

24 **SEC. 302. CAMPAIGN ADVERTISING AMENDMENTS.**

25 Section 318 of FECA (2 U.S.C. 441d) is amended—

1 (1) in subsection (a)—

2 (A) in the matter preceding paragraph
3 (1)—

4 (i) by striking “Whenever” and insert-
5 ing “Whenever a political committee makes
6 a disbursement for the purpose of financ-
7 ing any communication through any broad-
8 casting station, newspaper, magazine, out-
9 door advertising facility, mailing, or any
10 other type of general public political adver-
11 tising, or whenever”;

12 (ii) by striking “an expenditure” and
13 inserting “a disbursement”; and

14 (iii) by striking “direct”; and

15 (B) in paragraph (3), by inserting “and
16 permanent street address” after “name”; and

17 (2) by adding at the end the following new sub-
18 sections:

19 “(c) Any printed communication described in sub-
20 section (a) shall be—

21 “(1) of sufficient type size to be clearly read-
22 able by the recipient of the communication;

23 “(2) contained in a printed box set apart from
24 the other contents of the communication; and

1 “(3) consist of a reasonable degree of color con-
2 trast between the background and the printed state-
3 ment.

4 “(d)(1) Any broadcast or cablecast communication
5 described in subsection (a)(1) or subsection (a)(2) shall
6 include, in addition to the requirements of those sub-
7 sections, an audio statement by the candidate that identi-
8 fies the candidate and states that the candidate has ap-
9 proved the communication.

10 “(2) If a broadcast or cablecast communication de-
11 scribed in paragraph (1) is broadcast or cablecast by
12 means of television, the communication shall include, in
13 addition to the audio statement under paragraph (1), a
14 written statement which—

15 “(A) appears at the end of the communication
16 in a clearly readable manner with a reasonable de-
17 gree of color contrast between the background and
18 the printed statement, for a period of at least 4 sec-
19 onds; and

20 “(B) is accompanied by a clearly identifiable
21 photographic or similar image of the candidate.

22 “(e) Any broadcast or cablecast communication de-
23 scribed in subsection (a)(3) shall include, in addition to
24 the requirements of those subsections, in a clearly spoken
25 manner, the following statement: ‘_____ is

1 responsible for the content of this advertisement.' (with
2 the blank to be filled in with the name of the political
3 committee or other person paying for the communication
4 and the name of any connected organization of the payor).
5 If broadcast or cablecast by means of television, the state-
6 ment shall also appear in a clearly readable manner with
7 a reasonable degree of color contrast between the back-
8 ground and the printed statement, for a period of at least
9 4 seconds.'".

10 **SEC. 303. FILING OF REPORTS USING COMPUTERS AND**
11 **FACSIMILE MACHINES.**

12 Section 302(g) of FECA (2 U.S.C. 432(g)) is amend-
13 ed by adding at the end the following new paragraph:

14 "(6)(A) The Commission, in consultation with
15 the Secretary of the Senate and the Clerk of the
16 House of Representatives, may prescribe regulations
17 under which persons required to file designations,
18 statements, and reports under this Act—

19 "(i) are required to maintain and file them
20 for any calendar year in electronic form acces-
21 sible by computers if the person has, or has
22 reason to expect to have, aggregate contribu-
23 tions or expenditures in excess of a threshold
24 amount determined by the Commission; and

1 “(ii) may maintain and file them in that
2 manner if not required to do so under regula-
3 tions prescribed under clause (i).

4 “(B) The Commission, in consultation with the
5 Secretary of the Senate and the Clerk of the House
6 of Representatives, shall prescribe regulations which
7 allow persons to file designations, statements, and
8 reports required by this Act through the use of fac-
9 simile machines.

10 “(C) In prescribing regulations under this para-
11 graph, the Commission shall provide methods (other
12 than requiring a signature on the document being
13 filed) for verifying designations, statements, and re-
14 ports covered by the regulations. Any document veri-
15 fied under any of the methods shall be treated for
16 all purposes (including penalties for perjury) in the
17 same manner as a document verified by signature.

18 “(D) The Secretary of the Senate and the Clerk
19 of the House of Representatives shall ensure that
20 any computer or other system that they may develop
21 and maintain to receive designations, statements,
22 and reports in the forms required or permitted
23 under this paragraph is compatible with any such
24 system that the Commission may develop and main-
25 tain.”.

1 **SEC. 304. AUDITS.**

2 (a) **RANDOM AUDITS.**—Section 311(b) of FECA (2
3 U.S.C. 438(b)) is amended—

4 (1) by inserting “(1)” before “The Commis-
5 sion”; and

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) Notwithstanding paragraph (1), the Commission
9 may after all elections are completed conduct random au-
10 dits and investigations to ensure voluntary compliance
11 with this Act. The subjects of such audits and investiga-
12 tions shall be selected on the basis of criteria established
13 by vote of at least 4 members of the Commission to ensure
14 impartiality in the selection process. This paragraph does
15 not apply to an authorized committee of a candidate for
16 President or Vice President subject to audit under title
17 VI or to an authorized committee of an eligible Senate
18 candidate or an eligible House candidate subject to audit
19 under section 522(a).”.

20 (b) **EXTENSION OF PERIOD DURING WHICH CAM-
21 PAIGN AUDITS MAY BE BEGUN.**—Section 311(b) of
22 FECA (2 U.S.C. 438(b)) is amended by striking “6
23 months” and inserting “12 months”.

1 **SEC. 305. LIMIT ON CONGRESSIONAL USE OF THE FRANK-**
2 **ING PRIVILEGE.**

3 Section 3210(a)(6)(A) of title 39, United States
4 Code, is amended to read as follows:

5 “(A) A Member of Congress shall not mail
6 any mass mailing as franked mail during a year
7 in which there will be an election for the seat
8 held by the Member during the period between
9 January 1 of that year and the date of the gen-
10 eral election for that Office, unless the Member
11 has made a public announcement that the
12 Member will not be a candidate for reelection to
13 that year or for election to any other Federal
14 office.”.

15 **SEC. 306. AUTHORITY TO SEEK INJUNCTION.**

16 Section 309(a) of FECA (2 U.S.C. 437g(a)) is
17 amended—

18 (1) by adding at the end the following new
19 paragraph:

20 “(13)(A) If, at any time in a proceeding described
21 in paragraph (1), (2), (3), or (4), the Commission believes
22 that—

23 “(i) there is a substantial likelihood that a vio-
24 lation of this Act is occurring or is about to occur;

1 “(ii) the failure to act expeditiously will result
2 in irreparable harm to a party affected by the poten-
3 tial violation;

4 “(iii) expeditious action will not cause undue
5 harm or prejudice to the interests of others; and

6 “(iv) the public interest would be best served by
7 the issuance of an injunction,
8 the Commission may initiate a civil action for a temporary
9 restraining order or a temporary injunction pending the
10 outcome of the proceedings described in paragraphs (1),
11 (2), (3), and (4).

12 “(B) An action under subparagraph (A) shall be
13 brought in the United States district court for the district
14 in which the defendant resides, transacts business, or may
15 be found, or in which the violation is occurring, has oc-
16 curred, or is about to occur.”;

17 (2) in paragraph (7), by striking “(5) or (6)”
18 and inserting “(5), (6), or (13)”; and

19 (3) in paragraph (11), by striking “(6)” and in-
20 serting “(6) or (13)”.

21 **SEC. 307. SEVERABILITY.**

22 If any provision of this Act, an amendment made by
23 this Act, or the application of such provision or amend-
24 ment to any person or circumstance is held to be unconsti-
25 tutional, the remainder of this Act, the amendments made

1 by this Act, and the application of the provisions of such
2 to any person or circumstance shall not be affected there-
3 by.

4 **SEC. 308. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.**

5 (a) **DIRECT APPEAL TO SUPREME COURT.**—An ap-
6 peal may be taken directly to the Supreme Court of the
7 United States from any interlocutory order or final judg-
8 ment, decree, or order issued by any court ruling on the
9 constitutionality of any provision of this Act or amend-
10 ment made by this Act.

11 (b) **ACCEPTANCE AND EXPEDITION.**—The Supreme
12 Court shall, if it has not previously ruled on the question
13 addressed in the ruling below, accept jurisdiction over, ad-
14 vance on the docket, and expedite the appeal to the great-
15 est extent possible.

16 **SEC. 309. REPORTING REQUIREMENTS.**

17 (a) **CONTRIBUTORS.**—Section 302(c)(3) of FECA (2
18 U.S.C. 432(c)(3)) is amended by striking “\$200” and in-
19 serting “\$50”.

20 (b) **DISBURSEMENTS.**—Section 302(c)(5) of FECA
21 (2 U.S.C. 432(c)(5)) is amended by striking “\$200” and
22 inserting “\$50”.

1 **SEC. 310. EFFECTIVE DATE.**

2 Except as otherwise provided in this Act, the amend-
3 ments made by, and the provisions of, this Act shall take
4 effect on January 1, 1997.

5 **SEC. 311. REGULATIONS.**

6 The Federal Election Commission shall prescribe any
7 regulations required to carry out this Act not later than
8 9 months after the effective date of this Act.

○

104TH CONGRESS
1ST SESSION

S. 1389

To reform the financing of Federal elections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 3, 1995

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To reform the financing of Federal elections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Senate Campaign
5 Spending Limit and Election Reform Act of 1995".

6 SEC. 2. AMENDMENT OF CAMPAIGN ACT; TABLE OF CON- 7 TENTS.

8 (a) AMENDMENT OF FECA.—When used in this Act,
9 the term "FECA" means the Federal Election Campaign
10 Act of 1971 (2 U.S.C. 431 et seq.).

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Amendment of Campaign Act; table of contents.

TITLE I—SENATE ELECTION SPENDING LIMITS AND BENEFITS

Sec. 101. Senate election spending limits and benefits.

Sec. 102. Transition provisions.

Sec. 103. Free broadcast time.

Sec. 104. Broadcast rates and preemption.

Sec. 105. Reduced postage rates.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Candidate expenditures from personal funds.

Sec. 202. Restrictions on use of campaign funds for personal purposes.

Sec. 203. Campaign advertising amendments.

Sec. 204. Severability.

Sec. 205. Expedited review of constitutional issues.

Sec. 206. Effective date.

Sec. 207. Regulations.

3 **TITLE I—SENATE ELECTION** 4 **SPENDING LIMITS AND BENE-** 5 **FITS**

6 **SEC. 101. SENATE ELECTION SPENDING LIMITS AND BENE-** 7 **FITS.**

8 FECA is amended by adding at the end the following
 9 new title:

10 **“TITLE V—SPENDING LIMITS** 11 **AND BENEFITS FOR SENATE** 12 **ELECTION CAMPAIGNS**

13 **“SEC. 501. CANDIDATES ELIGIBLE TO RECEIVE BENEFITS.**

14 “(a) IN GENERAL.—For purposes of this title, a can-
 15 didate is an eligible Senate candidate if the candidate—

1 “(1) meets the primary and general election fil-
2 ing requirements of subsections (c) and (d);

3 “(2) meets the primary and runoff election ex-
4 penditure limits of subsection (b);

5 “(3) meets the threshold contribution require-
6 ments of subsection (e); and

7 “(4) does not exceed the limitation on expendi-
8 tures from personal funds under section 502(a).

9 “(b) PRIMARY AND RUNOFF EXPENDITURE LIM-
10 ITS.—

11 “(1) IN GENERAL.—The requirements of this
12 subsection are met if—

13 “(A) the candidate or the candidate’s au-
14 thorized committees did not make expenditures
15 for the primary election in excess of the lesser
16 of—

17 “(i) 67 percent of the general election
18 expenditure limit under section 502(b); or

19 “(ii) \$2,750,000; and

20 “(B) the candidate and the candidate’s au-
21 thorized committees did not make expenditures
22 for any runoff election in excess of 20 percent
23 of the general election expenditure limit under
24 section 502(b).

“(2) INDEXING.—The \$2,750,000 amount under paragraph (1)(A)(ii) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that the base period shall be calendar year 1995.

“(3) INCREASE BASED ON EXPENDITURES OF OPPONENT.—The limitations under paragraph (1) with respect to any candidate shall be increased by the aggregate amount of independent expenditures in opposition to, or on behalf of any opponent of, such candidate during the primary or runoff election period, whichever is applicable, that are required to be reported to the Secretary of the Senate with respect to such period under section 304(c).

“(c) PRIMARY FILING REQUIREMENTS.—

“(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate a certification that—

“(A) the candidate and the candidate’s authorized committees—

“(i) will meet the primary and runoff election expenditure limits of subsection (b); and

1 “(ii) will only accept contributions for
2 the primary and runoff elections which do
3 not exceed such limits;

4 “(B) the candidate and the candidate’s au-
5 thorized committees will meet the limitation on
6 expenditures from personal funds under section
7 502(a); and

8 “(C) the candidate and the candidate’s au-
9 thorized committees will meet the general elec-
10 tion expenditure limit under section 502(b).

11 “(2) DEADLINE FOR FILING CERTIFICATION.—
12 The certification under paragraph (1) shall be filed
13 not later than the date the candidate files as a can-
14 didate for the primary election.

15 “(d) GENERAL ELECTION FILING REQUIREMENTS.—

16 “(1) IN GENERAL.—The requirements of this
17 subsection are met if the candidate files a certifi-
18 cation with the Secretary of the Senate under pen-
19 alty of perjury that—

20 “(A) the candidate and the candidate’s au-
21 thorized committees—

22 “(i) met the primary and runoff elec-
23 tion expenditure limits under subsection
24 (b); and

6

“(ii) did not accept contributions for the primary or runoff election in excess of the primary or runoff expenditure limit under subsection (b), whichever is applicable, reduced by any amounts transferred to this election cycle from a preceding election cycle;

“(B) at least one other candidate has qualified for the same general election ballot under the law of the State involved;

“(C) the candidate and the authorized committees of the candidate—

“(i) except as otherwise provided by this title, will not make expenditures that exceed the general election expenditure limit under section 502(b);

“(ii) will not accept any contributions in violation of section 315;

“(iii) except as otherwise provided by this title, will not accept any contribution for the general election involved to the extent that such contribution would cause the aggregate amount of contributions to exceed the sum of the amount of the general election expenditure limit under sec-

1 tion 502(b), reduced by any amounts
2 transferred to this election cycle from a
3 previous election cycle and not taken into
4 account under subparagraph (A)(ii);

5 “(iv) will furnish campaign records,
6 evidence of contributions, and other appro-
7 priate information to the Commission; and

8 “(v) will cooperate in the case of any
9 audit and examination by the Commission;
10 and

11 “(D) the candidate intends to make use of
12 the benefits provided under section 503.

13 “(2) DEADLINE FOR FILING CERTIFICATION.—

14 The certification under paragraph (1) shall be filed
15 not later than 7 days after the earlier of—

16 “(A) the date the candidate qualifies for
17 the general election ballot under State law; or

18 “(B) if under State law, a primary or run-
19 off election to qualify for the general election
20 ballot occurs after September 1, the date the
21 candidate wins the primary or runoff election.

22 “(e) THRESHOLD CONTRIBUTION REQUIREMENTS.—

23 “(1) IN GENERAL.—The requirements of this
24 subsection are met if the candidate and the can-
25 didate’s authorized committees have received allow-

1 able contributions during the applicable period in an
2 amount at least equal to the lesser of—

3 “(A) 10 percent of the general election ex-
4 penditure limit under section 502(b); or

5 “(B) \$250,000.

6 “(2) DEFINITIONS.—For purposes of this sub-
7 section—

8 “(A) the term ‘allowable contributions’
9 means contributions that are made as gifts of
10 money by an individual pursuant to a written
11 instrument identifying such individual as the
12 contributor; and

13 “(B) the term ‘applicable period’ means—

14 “(i) the period beginning on January
15 1 of the calendar year preceding the cal-
16 endar year of the general election involved
17 and ending on the date on which the cer-
18 tification under subsection (c)(2) is filed by
19 the candidate; or

20 “(ii) in the case of a special election
21 for the office of United States Senator, the
22 period beginning on the date the vacancy
23 in such office occurs and ending on the
24 date of the general election.

1 **"SEC. 502. LIMITATION ON EXPENDITURES.**

2 **"(a) LIMITATION ON USE OF PERSONAL FUNDS.—**

3 **"(1) IN GENERAL.—**The aggregate amount of
4 expenditures that may be made during an election
5 cycle by an eligible Senate candidate or such can-
6 didate's authorized committees from the sources de-
7 scribed in paragraph (2) shall not exceed the lesser
8 of—

9 **"(A)** 10 percent of the general election ex-
10 penditure limit under subsection (b); or

11 **"(B)** \$250,000.

12 **"(2) SOURCES.—**A source is described in this
13 subsection if it is—

14 **"(A)** personal funds of the candidate and
15 members of the candidate's immediate family;
16 or

17 **"(B)** personal loans incurred by the can-
18 didate and members of the candidate's imme-
19 diate family.

20 **"(b) GENERAL ELECTION EXPENDITURE LIMIT.—**

21 **"(1) IN GENERAL.—**Except as otherwise pro-
22 vided in this title, the aggregate amount of expendi-
23 tures for a general election by an eligible Senate
24 candidate and the candidate's authorized committees
25 shall not exceed the lesser of—

26 **"(A)** \$5,500,000; or

10

1 “(B) the greater of—

2 “(i) \$950,000; or

3 “(ii) \$400,000; plus

4 “(I) 30 cents multiplied by the

5 voting age population not in excess of

6 4,000,000; and

7 “(II) 25 cents multiplied by the

8 voting age population in excess of

9 4,000,000.

10 “(2) EXCEPTION.—In the case of an eligible

11 Senate candidate in a State that has not more than

12 1 transmitter for a commercial Very High Fre-

13 quency (VHF) television station licensed to operate

14 in that State, paragraph (1)(B)(ii) shall be applied

15 by substituting—

16 “(A) ‘80 cents’ for ‘30 cents’ in subclause

17 (I); and

18 “(B) ‘70 cents’ for ‘25 cents’ in subclause

19 (II).

20 “(3) INDEXING.—The amount otherwise deter-

21 mined under paragraph (1) for any calendar year

22 shall be increased by the same percentage as the

23 percentage increase for such calendar year under

24 section 501(b)(2).

1 “(4) INCREASE BASED ON EXPENDITURES OF
2 OPPONENT.—The limitations under paragraph (1)
3 with respect to any candidate shall be increased by
4 the aggregate amount of independent expenditures
5 in opposition to, or on behalf of any opponent of,
6 such candidate during the primary or runoff election
7 period, whichever is applicable, that are required to
8 be reported to the Secretary of the Senate with re-
9 spect to such period under section 304(c).

10 “(c) PAYMENT OF TAXES.—The limitation under
11 subsection (b) shall not apply to any expenditure for Fed-
12 eral, State, or local taxes with respect to earnings on con-
13 tributions raised.

14 **“SEC. 503. BENEFITS ELIGIBLE CANDIDATES ENTITLED TO**
15 **RECEIVE.**

16 “An eligible Senate candidate shall be entitled to re-
17 ceive—

18 “(1) the broadcast media rates provided under
19 section 315(b) of the Communications Act of 1934;

20 “(2) the free broadcast time provided under
21 section 315(c) of such Act; and

22 “(3) the reduced postage rates provided in sec-
23 tion 3626(e) of title 39, United States Code.

1 **"SEC. 504. CERTIFICATION BY COMMISSION.**

2 “(a) IN GENERAL.—Not later than 48 hours after
3 a candidate qualifies for a general election ballot, the
4 Commission shall certify the candidate’s eligibility for free
5 broadcast time under section 315(b)(2) of the Commu-
6 nications Act of 1934. The Commission shall revoke such
7 certification if it determines a candidate fails to continue
8 to meet the requirements of this title.

9 “(b) DETERMINATIONS BY COMMISSION.—All deter-
10 minations (including certifications under subsection (a))
11 made by the Commission under this title shall be final,
12 except to the extent that they are subject to examination
13 and audit by the Commission under section 505.

14 **"SEC. 505. REPAYMENTS; ADDITIONAL CIVIL PENALTIES.**

15 “(a) EXCESS PAYMENTS; REVOCATION OF STA-
16 TUS.—If the Commission revokes the certification of a
17 candidate as an eligible Senate candidate under section
18 504(a), the Commission shall notify the candidate, and the
19 candidate shall pay an amount equal to the value of the
20 benefits received under this title.

21 “(b) MISUSE OF BENEFITS.—If the Commission de-
22 termines that any benefit made available to an eligible
23 Senate candidate under this title was not used as provided
24 for in this title, the Commission shall so notify the can-
25 didate and the candidate shall pay an amount equal to
26 the value of such benefit.”.

1 **SEC. 102. TRANSITION PROVISIONS.**

2 (a) EXPENDITURES MADE PRIOR TO DATE OF EN-
3 ACTMENT.—(1) Expenditures made by an eligible Senate
4 candidate on or prior to the date of enactment of this title
5 shall not be counted against the limits specified in section
6 502 of FECA, as amended by section 101.

7 (2) For purposes of this section, the term “expendi-
8 ture” includes any direct or indirect payment or distribu-
9 tion or obligation to make payment or distribution of
10 money.

11 (b) RELATIONSHIP TO OTHER TITLES.—The provi-
12 sions of titles I through IV of the Federal Election Cam-
13 paign Act of 1971 shall remain in effect with respect to
14 Senate election campaigns affected by this title or the
15 amendments made by this title except to the extent that
16 those provisions are inconsistent with this title or the
17 amendments made by this title.

18 **SEC. 103. FREE BROADCAST TIME.**

19 (a) IN GENERAL.—Section 315 of the Communica-
20 tions Act of 1934 (47 U.S.C. 315) is amended—

21 (1) in subsection (a)—

22 (A) by striking “within the meaning of this
23 subsection” and inserting “within the meaning
24 of this subsection and subsection (c)”;

25 (B) by redesignating subsections (c) and
26 (d) as subsections (d) and (e), respectively; and

1 (C) by inserting immediately after sub-
2 section (b) the following new subsection:

3 “(c)(1) An eligible Senate candidate who has quali-
4 fied for the general election ballot shall be entitled to re-
5 ceive a total of 30 minutes of free broadcast time from
6 broadcasting stations within the State.

7 “(2) Unless a candidate elects otherwise, the broad-
8 cast time made available under this subsection shall be
9 between 6:00 p.m. and 10:00 p.m. on any day that falls
10 on Monday through Friday.

11 “(3) If—

12 “(A) a licensee’s audience with respect to any
13 broadcasting station is measured or rated by a rec-
14 ognized media rating service in more than 1 State;
15 and

16 “(B) during the period beginning on the first
17 day following the date of the last general election
18 and ending on the date of the next general election
19 there is an election to the United States Senate in
20 more than 1 of such States,

21 the 30 minutes of broadcast time under this subsection
22 shall be allocated equally among the States described in
23 subparagraph (B).

1 “(4)(A) In the case of an election among more than
2 2 candidates, the broadcast time provided under para-
3 graph (1) shall be allocated as follows:

4 “(i) The amount of broadcast time that shall be
5 provided to the candidate of a minor party shall be
6 equal to the number of minutes allocable to the
7 State multiplied by the percentage of the number of
8 popular votes received by the candidate of that party
9 in the preceding general election for the Senate in
10 the State (or if subsection (d)(4)(B) applies, the per-
11 centage determined under such subsection).

12 “(ii) The amount of broadcast time remaining
13 after assignment of broadcast time to minor party
14 candidates under clause (i) shall be allocated equally
15 between the major party candidates.

16 “(B) In the case of an election where only 1 candidate
17 qualifies to be on the general election ballot, no time shall
18 be required to be provided by a licensee under this sub-
19 section.

20 “(5) The Federal Election Commission shall by regu-
21 lation exempt from the requirements of this subsection—

22 “(A) a licensee whose signal is broadcast sub-
23 stantially nationwide; and

1 “(B) a licensee that establishes that such re-
2 quirements would impose a significant economic
3 hardship on the licensee.”; and

4 (2) in subsection (d), as redesignated—

5 (A) by striking “and” at the end of para-
6 graph (1);

7 (B) by striking the period at the end of
8 paragraph (2) and inserting a semicolon; and

9 (C) by adding at the end the following new
10 paragraphs:

11 “(3) the term ‘major party’ means, with respect
12 to an election for the United States Senate in a
13 State, a political party whose candidate for the Unit-
14 ed States Senate in the preceding general election
15 for the Senate in that State received, as a candidate
16 of that party, 25 percent or more of the number of
17 popular votes received by all candidates for the Sen-
18 ate;

19 “(4) the term ‘minor party’ means, with respect
20 to an election for the United States Senate in a
21 State, a political party—

22 “(A) whose candidate for the United
23 States Senate in the preceding general election
24 for the Senate in that State received 5 percent
25 or more but less than 25 percent of the number

1 of popular votes received by all candidates for
2 the Senate; or

3 “(B) whose candidate for the United
4 States Senate in the current general election for
5 the Senate in that State has obtained the signa-
6 tures of at least 5 percent of the State’s reg-
7 istered voters, as determined by the chief voter
8 registration official of the State, in support of
9 a petition for an allocation of free broadcast
10 time under this subsection; and

11 “(5) the term ‘Senate election cycle’ means,
12 with respect to an election to a seat in the United
13 States Senate, the 2-year period ending on the date
14 of the general election for that seat.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to general elections occurring after
17 December 31, 1995 (and the election cycles relating there-
18 to).

19 **SEC. 104. BROADCAST RATES AND PREEMPTION.**

20 (a) BROADCAST RATES.—Section 315(b) of the Com-
21 munications Act of 1934 (47 U.S.C. 315(b)) is amended—

22 (1) by striking “(b) The changes” and inserting
23 “(b)(1) The changes”;

24 (2) by redesignating paragraphs (1) and (2) as
25 subparagraphs (A) and (B), respectively;

1 (3) in paragraph (1)(A), as redesignated—

2 (A) by striking “forty-five” and inserting
3 “30”; and

4 (B) by striking “lowest unit charge of the
5 station for the same class and amount of time
6 for the same period” and inserting “lowest
7 charge of the station for the same amount of
8 time for the same period on the same date”;
9 and

10 (4) by adding at the end the following new
11 paragraph:

12 “(2) In the case of an eligible Senate candidate (as
13 described in section 501(a) of the Federal Election Cam-
14 paign Act), the charges for the use of a television broad-
15 casting station during the 30-day period and 60-day pe-
16 riod referred to in paragraph (1)(A) shall not exceed 50
17 percent of the lowest charge described in paragraph
18 (1)(A).”

19 (b) PREEMPTION; ACCESS.—Section 315 of such Act
20 (47 U.S.C. 315), as amended by section 102(a), is amend-
21 ed—

22 (1) by redesignating subsections (d) and (e) as
23 redesignated, as subsections (e) and (f), respectively;
24 and

1 (2) by inserting immediately after subsection
2 (c) the following subsection:

3 “(d)(1) Except as provided in paragraph (2), a li-
4 censee shall not preempt the use, during any period speci-
5 fied in subsection (b)(1)(A), of a broadcasting station by
6 an eligible Senate candidate who has purchased and paid
7 for such use pursuant to subsection (b)(2).

8 “(2) If a program to be broadcast by a broadcasting
9 station is preempted because of circumstances beyond the
10 control of the broadcasting station, any candidate adver-
11 tising spot scheduled to be broadcast during that program
12 may also be preempted.”.

13 (c) REVOCATION OF LICENSE FOR FAILURE TO PER-
14 MIT ACCESS.—Section 312(a)(7) of the Communications
15 Act of 1934 (47 U.S.C. 312(a)(7)) is amended—

16 (1) by striking “or repeated”;

17 (2) by inserting “or cable system” after “broad-
18 casting station”; and

19 (3) by striking “his candidacy” and inserting
20 “the candidacy of such person, under the same
21 terms, conditions, and business practices as apply to
22 its most favored advertiser”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to the general elections occurring

1 after December 31, 1995 (and the election cycles relating
2 thereto).

3 **SEC. 105. REDUCED POSTAGE RATES.**

4 (a) IN GENERAL.—Section 3626(e) of title 39, Unit-
5 ed States Code, is amended—

6 (1) in paragraph (2)—

7 (A) in subparagraph (A)—

8 (i) by striking “and the National” and
9 inserting “the National”; and

10 (ii) by inserting before the semicolon
11 the following: “, and, subject to paragraph
12 (3), the principal campaign committee of
13 an eligible Senate candidate;”;

14 (B) in subparagraph (B), by striking
15 “and” after the semicolon;

16 (C) in subparagraph (C), by striking the
17 period and inserting a semicolon; and

18 (D) by adding after subparagraph (C) the
19 following new subparagraphs:

20 “(D) the term ‘principal campaign committee’
21 has the meaning given such term in section 301 of
22 the Federal Election Campaign Act of 1971; and

23 “(E) the term ‘eligible Senate candidate’ has
24 the meaning given such term in section 501(a) of
25 the Federal Election Campaign Act of 1971.”; and

1 (2) by adding after paragraph (2) the following
2 new paragraph:

3 “(3) The rate made available under this subsection
4 with respect to an eligible Senate candidate shall apply
5 only to that number of pieces of mail equal to 2 times
6 the number of individuals in the voting age population (as
7 certified under section 315(e) of such Act) of the State.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to the general elections occurring
10 after December 31, 1995 (and the election cycles relating
11 thereto).

12 **TITLE II—MISCELLANEOUS** 13 **PROVISIONS**

14 **SEC. 201. CANDIDATE EXPENDITURES FROM PERSONAL** 15 **FUNDS.**

16 Section 315 of FECA (2 U.S.C. 441a) is amended
17 by adding at the end the following new subsection:

18 “(i)(1)(A) Not later than 15 days after a candidate
19 qualifies for a primary election ballot under State law, the
20 candidate shall file with the Commission, and each other
21 candidate who has qualified for that ballot, a declaration
22 stating whether the candidate intends to expend during
23 the election cycle an amount exceeding \$250,000 from—
24 “(i) the candidate’s personal funds;

1 “(ii) the funds of the candidate’s immediate
2 family; and

3 “(iii) personal loans incurred by the candidate
4 and the candidate’s immediate family in connection
5 with the candidate’s election campaign.

6 “(B) The declaration required by subparagraph (A)
7 shall be in such form and contain such information as the
8 Commission may require by regulation.

9 “(2) Notwithstanding subsection (a), the limitations
10 on contributions under subsection (a) shall be modified as
11 provided under paragraph (3) with respect to other can-
12 didates for the same office who are not described in sub-
13 paragraph (A), (B), or (C), if the candidate—

14 “(A) declares under paragraph (1) that the
15 candidate intends to expend for the primary and
16 general election funds described in such paragraph
17 in an amount exceeding \$250,000;

18 “(B) expends such funds in the primary and
19 general election in an amount exceeding \$250,000;
20 or

21 “(C) fails to file the declaration required by
22 paragraph (1).

23 “(3) For purposes of paragraph (2)—

24 “(A) the limitation under subsection (a)(1)(A)
25 shall be increased to \$5,000; and

23

1 “(B) if a candidate described in paragraph
2 (2)(B) expends more than \$1,000,000 of funds de-
3 scribed in paragraph (1) in the primary and general
4 elections the limitation under subsection (a)(1)(A)
5 shall not apply.

6 “(4) If—

7 “(A) the modifications under paragraph (3)
8 apply for a convention or a primary election by rea-
9 son of 1 or more candidates taking (or failing to
10 take) any action described in subparagraph (A), (B),
11 or (C) of paragraph (2); and

12 “(B) such candidates are not candidates in any
13 subsequent election in the same election campaign,
14 including the general election,
15 paragraph (3) shall cease to apply to the other candidates
16 in such campaign.

17 “(5) No increase described in paragraph (3) shall
18 apply under paragraph (2) to noneligible Senate can-
19 didates in any election if eligible Senate candidates are
20 participating in the same election campaign.

21 “(6) A candidate who—

22 “(A) declares, pursuant to paragraph (1), that
23 the candidate does not intend to expend funds de-
24 scribed in paragraph (1) in excess of \$250,000; and

1 “(B) subsequently changes such declaration or
2 expends such funds in excess of that amount,
3 shall file an amended declaration with the Commission and
4 notify all other candidates for the same office not later
5 than 24 hours after changing such declaration or exceed-
6 ing such limits, whichever first occurs, by sending a notice
7 by certified mail, return receipt requested.”.

8 **SEC. 202. RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR**
9 **PERSONAL PURPOSES.**

10 (a) RESTRICTIONS ON USE OF CAMPAIGN FUNDS.—
11 Title III of FECA (2 U.S.C. 431 et seq.) is amended by
12 adding at the end the following new section:

13 “RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR
14 PERSONAL PURPOSES

15 “SEC. 324. (a) An individual who receives contribu-
16 tions as a candidate for Federal office—

17 “(1) shall use such contributions only for legiti-
18 mate and verifiable campaign expenses; and

19 “(2) shall not use such contributions for any in-
20 herently personal purpose.

21 “(b) As used in this subsection—

22 “(1) the term ‘campaign expenses’ means ex-
23 penses attributable solely to bona fide campaign pur-
24 poses; and

25 “(2) the term ‘inherently personal purpose’
26 means a purpose that, by its nature, confers a per-

1 sonal benefit, including a home mortgage payment,
2 clothing purchase, noncampaign automobile expense,
3 country club membership, vacation, or trip of a
4 noncampaign nature, and any other inherently per-
5 sonal living expense as determined under the regula-
6 tions promulgated pursuant to section 302(b) of the
7 Senate Campaign Spending Limit and Election Re-
8 form Act of 1995.”.

9 (b) REGULATIONS.—Not later than 90 days after the
10 date of enactment of this section, the Federal Election
11 Commission shall promulgate regulations to implement
12 subsection (a). Such regulations shall apply to all con-
13 tributions possessed by an individual at the time of imple-
14 mentation of this section.

15 **SEC. 203. CAMPAIGN ADVERTISING AMENDMENTS.**

16 Section 318 of FECA (2 U.S.C. 441d) is amended—

17 (1) in subsection (a)—

18 (A) in the matter preceding paragraph

19 (1)—

20 (i) by striking “Whenever” and insert-
21 ing “Whenever a political committee makes
22 a disbursement for the purpose of financ-
23 ing any communication through any broad-
24 casting station, newspaper, magazine, out-
25 door advertising facility, mailing, or any

1 other type of general public political adver-
2 tising, or whenever”;

3 (ii) by striking “an expenditure” and
4 inserting “a disbursement”; and

5 (iii) by striking “direct”; and

6 (B) in paragraph (3), by inserting “and
7 permanent street address” after “name”; and

8 (2) by adding at the end the following new sub-
9 sections:

10 “(c) Any printed communication described in sub-
11 section (a) shall be—

12 “(1) of sufficient type size to be clearly read-
13 able by the recipient of the communication;

14 “(2) contained in a printed box set apart from
15 the other contents of the communication; and

16 “(3) consist of a reasonable degree of color con-
17 trast between the background and the printed state-
18 ment.

19 “(d)(1) Any broadcast or cablecast communication
20 described in subsection (a)(1) or subsection (a)(2) shall
21 include, in addition to the requirements of those sub-
22 sections, an audio statement by the candidate that identi-
23 fies the candidate and states that the candidate has ap-
24 proved the communication.

1 “(2) If a broadcast or cablecast communication de-
2 scribed in paragraph (1) is broadcast or cablecast by
3 means of television, the communication shall include, in
4 addition to the audio statement under paragraph (1), a
5 written statement which—

6 “(A) states: ‘I (name of the candidate), am a
7 candidate for (the office the candidate is seeking)
8 and I have approved this message’;

9 “(B) appears at the end of the communication
10 in a clearly readable manner with a reasonable de-
11 gree of color contrast between the background and
12 the printed statement, for a period of at least 4 sec-
13 onds; and

14 “(C) is accompanied by a clearly identifiable
15 photographic or similar image of the candidate.

16 “(e) Any broadcast or cablecast communication de-
17 scribed in subsection (a)(3) shall include, in addition to
18 the requirements of those subsections, in a clearly spoken
19 manner, the following statement: ‘_____ is
20 responsible for the content of this advertisement.’ (with
21 the blank to be filled in with the name of the political
22 committee or other person paying for the communication
23 and the name of any connected organization of the payor).
24 If broadcast or cablecast by means of television, the state-
25 ment shall also appear in a clearly readable manner with

1 a reasonable degree of color contrast between the back-
2 ground and the printed statement, for a period of at least
3 4 seconds.”.

4 **SEC. 204. SEVERABILITY.**

5 If any provision of this Act, an amendment made by
6 this Act, or the application of such provision or amend-
7 ment to any person or circumstance is held to be unconsti-
8 tutional, the remainder of this Act, the amendments made
9 by this Act, and the application of the provisions of such
10 to any person or circumstance shall not be affected there-
11 by.

12 **SEC. 205. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.**

13 (a) **DIRECT APPEAL TO SUPREME COURT.**—An ap-
14 peal may be taken directly to the Supreme Court of the
15 United States from any interlocutory order or final judg-
16 ment, decree, or order issued by any court ruling on the
17 constitutionality of any provision of this Act or amend-
18 ment made by this Act.

19 (b) **ACCEPTANCE AND EXPEDITION.**—The Supreme
20 Court shall, if it has not previously ruled on the question
21 addressed in the ruling below, accept jurisdiction over, ad-
22 vance on the docket, and expedite the appeal to the great-
23 est extent possible.

1 **SEC. 206. EFFECTIVE DATE.**

2 Except as otherwise provided in this Act, the amend-
3 ments made by, and the provisions of, this Act shall take
4 effect on the date of the enactment of this Act.

5 **SEC. 207. REGULATIONS.**

6 The Federal Election Commission shall prescribe any
7 regulations required to carry out this Act not later than
8 9 months after the effective date of this Act.

○

104TH CONGRESS
2D SESSION

S. 1528

To reform the financing of Senate campaigns, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1996

Mr. BRADLEY introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To reform the financing of Senate campaigns, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Senate Campaign Fi-
5 nance Reform Act of 1996".

6 **SEC. 2. SENATE ELECTION CAMPAIGN FINANCING.**

7 (a) AMENDMENT OF THE FEDERAL ELECTION CAM-
8 PAIGN ACT OF 1971.—The Federal Election Campaign
9 Act of 1971 is amended by adding at the end the following
10 new title:

1 **“TITLE V—SENATE ELECTION**
2 **CAMPAIGN FINANCING**

3 **“SEC. 501. SENATE CAMPAIGN FINANCING.**

4 “No Senate candidate or authorized committee of a
5 Senate candidate shall accept any contribution with re-
6 spect to a general election or make any expenditures with
7 respect to a general election except as provided in this
8 title.

9 **“SEC. 502. REQUIREMENTS FOR RECEIPT OF BENEFITS.**

10 “(a) **ELIGIBLE SENATE CANDIDATE.**—For purposes
11 of this title, a Senate candidate is an eligible Senate can-
12 didate if the candidate files a declaration with the Sec-
13 retary of the Senate under penalty of perjury stating
14 that—

15 “(1) the candidate agrees in writing to partici-
16 pate in at least 2 debates, sponsored by a non-
17 partisan or bipartisan organization, with all other
18 candidates for that office who are receiving pay-
19 ments under this title;

20 “(2) the candidate and the candidate’s author-
21 ized committees will not accept any contribution
22 with respect to a general election or make any ex-
23 penditure with respect to a general election except
24 from funds provided under this title;

“(3) the candidate and the authorized committees of such candidate did not accept contributions, or make expenditures, for the primary or runoff election in excess of the limitations under subsection (b); and

“(4) the candidate and the authorized committees of such candidate—

“(A) will deposit all payments received under this title in an account insured by the Federal Deposit Insurance Corporation from which funds may be withdrawn by check or similar means of payment to third parties; and

“(B) will furnish campaign records, evidence of contributions, and other appropriate information to the Commission.

“(b) PRIMARY AND RUNOFF EXPENDITURE AND CONTRIBUTION LIMITATIONS.—The requirements of this subsection are met if—

“(1) the candidate and the candidate’s authorized committees have not received contributions from any individual for the primary or runoff election which in the aggregate exceed \$100;

“(2) all contributions received by the candidate and the candidate’s authorized committees are from individuals; and

1 “(3) the candidate and the candidate’s author-
2 ized committees did not make expenditures for the
3 primary or runoff election in excess of 50 percent of
4 the total amount that will be available to all can-
5 didates in the State for the general election under
6 section 504(b) (based on the State’s estimate of the
7 total amount made 30 days prior to the date of the
8 primary or runoff election).

9 “(c) TIME FOR FILING.—The declaration under sub-
10 section (a) shall be filed not later than 7 days after the
11 earlier of—

12 “(1) the date the candidate qualifies for the
13 general election ballot under State law; or

14 “(2) if, under State law, a primary or runoff
15 election to qualify for the general election ballot oc-
16 curs after September 1, the date the candidate wins
17 the primary or runoff election.

18 **“SEC. 503. CERTIFICATION BY COMMISSION.**

19 “(a) REQUEST.—Each eligible Senate candidate
20 seeking to receive benefits under this title shall submit a
21 request to the Commission, at such time and in such man-
22 ner as the Commission may require in regulations, con-
23 taining—

24 “(1) a copy of the declaration filed pursuant to
25 section 502(a);

1 “(2) such additional information as the Com-
2 mission may require in regulations; and

3 “(3) a verification signed by the candidate and
4 the treasurer of the principal campaign committee of
5 such candidate stating that the information fur-
6 nished in support of the request is correct and fully
7 satisfies the requirements of this title.

8 “(b) CERTIFICATION.—

9 “(1) ISSUANCE.—Not later than 48 hours after
10 a Senate candidate files a request with the Commis-
11 sion to receive benefits under this title, the Commis-
12 sion shall—

13 “(A) issue a certification to each candidate
14 who satisfies the requirements of section 502;

15 “(B) calculate the amount of payments to
16 which such candidate is entitled pursuant to
17 section 504; and

18 “(C) transmit notification of the certifi-
19 cation to the Secretary of the Senate.

20 “(2) REVOCATION.—The Commission shall re-
21 voke such certification if the Commission determines
22 a candidate fails to continue to satisfy the require-
23 ments of section 502.

24 “(c) DETERMINATIONS BY COMMISSION.—All deter-
25 minations (including certifications under subsection (b))

1 made by the Commission under this title shall be final and
2 conclusive, except to the extent that they are subject to
3 judicial review under section 505.

4 **"SEC. 504. BENEFITS ELIGIBLE SENATE CANDIDATES ENTI-**
5 **TLED TO RECEIVE.**

6 **"(a) USE OF FREE BROADCAST TIME.—**

7 **"(1) IN GENERAL.—**Each eligible Senate can-
8 didate shall be entitled to free broadcast time as
9 provided under section 315A of the Communications
10 Act of 1934.

11 **"(2) BROADCAST DURATION.—**Free broadcast
12 time shall be used in segments of not less than 1
13 minute.

14 **"(b) GENERAL ELECTION CAMPAIGN FINANCING.—**

15 **"(1) AMOUNT OF PAYMENTS.—(A)** Each eligi-
16 ble Senate candidate in a State shall receive a pay-
17 ment for the general election in an amount equal to
18 the State share divided by the number of eligible
19 Senate candidates in the State.

20 **"(B)** For purposes of this paragraph, the term
21 'State share' means, with respect to a State, the
22 sum of—

23 **"(i)** 50 percent of the funds in the Senate
24 Election Campaign Fund which are attributable
25 to donations from taxpayers from such State

and which remain in the fund after the last election for the office of United States Senator in that State, and interest allocable to such portion, plus

“(ii) 50 percent of the funds in the Senate Election Campaign Fund which are attributable to donations from taxpayers from such State after such election and before the 2d calendar year preceding the calendar year of the election, and interest allocable to such portion, plus

“(iii) 100 percent of the funds in the Senate Election Campaign Fund which are attributable to donations from taxpayers from such State during the 2 calendar years preceding the calendar year of the election, and interest allocable to such portion.

“(C) For purposes of this paragraph, donations made to the Senate Election Campaign Fund which are included with an income tax return for a taxable year under section 6097 of the Internal Revenue Code of 1986 shall be treated as made on the last day of the calendar year in which the taxable year ends.

“(2) FREE BROADCAST TIME.—Free broadcast time provided pursuant to subsection (a) shall not be

1 used in calculating the amount a candidate is enti-
2 tled to receive under this subsection.

3 **“SEC. 505. JUDICIAL REVIEW.**

4 “(a) JUDICIAL REVIEW.—Any agency action by the
5 Commission made under this title shall be subject to re-
6 view by the United States Court of Appeals for the Dis-
7 trict of Columbia Circuit upon petition filed in such court
8 not later than 30 days after the agency action by the Com-
9 mission for which review is sought. It shall be the duty
10 of the Court of Appeals, ahead of all matters not filed
11 under this title, to advance on the docket and expeditiously
12 take action on all petitions filed pursuant to this title.

13 “(b) APPLICATION OF TITLE 5.—The provisions of
14 chapter 7 of title 5, United States Code, shall apply to
15 judicial review of any agency action by the Commission.

16 “(c) AGENCY ACTION.—For purposes of this section,
17 the term ‘agency action’ has the meaning given such term
18 by section 551(13) of title 5, United States Code.

19 **“SEC. 506. PARTICIPATION BY COMMISSION IN JUDICIAL**
20 **PROCEEDINGS.**

21 “(a) APPEARANCES.—The Commission is authorized
22 to appear in and defend against any action instituted
23 under this section and under section 505 either by attor-
24 neys employed in its office or by counsel whom it may ap-
25 point without regard to the provisions of title 5, United

1 States Code, governing appointments in the competitive
2 service, and whose compensation it may fix without regard
3 to the provisions of chapter 51 and subchapter III of chap-
4 ter 53 of such title.

5 “(b) INSTITUTION OF ACTIONS.—The Commission is
6 authorized, through attorneys and counsel described in
7 subsection (a), to institute actions in the district courts
8 of the United States to seek recovery of any amounts de-
9 termined under this title to be payable to the Secretary
10 of the Treasury.

11 “(c) INJUNCTIVE RELIEF.—The Commission is au-
12 thorized, through attorneys and counsel described in sub-
13 section (a), to petition the courts of the United States for
14 such injunctive relief as is appropriate in order to imple-
15 ment any provision of this title.

16 “(d) APPEALS.—The Commission is authorized on
17 behalf of the United States, to appeal from, and to petition
18 the Supreme Court for certiorari to review of, judgments
19 or decrees entered with respect to actions in which it ap-
20 pears pursuant to the authority provided in this section.

21 **“SEC. 508. PAYMENTS RELATING TO CANDIDATES.**

22 “(a) ESTABLISHMENT OF CAMPAIGN FUND.—

23 “(1) ESTABLISHMENT.—There is established on
24 the books of the Treasury of the United States a

1 special fund to be known as the 'Senate Election
2 Campaign Fund'.

3 "(2) APPROPRIATIONS.—(A) There are appro-
4 priated to the Fund for each fiscal year, out of
5 amounts in the general fund of the Treasury not
6 otherwise appropriated, amounts equal to any con-
7 tributions by persons which are specifically des-
8 ignated as being made to the Fund.

9 "(B) The Secretary of the Treasury shall, from
10 time to time, transfer to the Fund an amount not
11 in excess of the amounts described in subparagraph
12 (A).

13 "(C) Amounts in the Fund shall remain avail-
14 able without fiscal year limitation.

15 "(3) AVAILABILITY OF FUNDS.—Amounts in
16 the Fund shall be available only for the purposes of
17 making payments required under this title.

18 "(4) ACCOUNTS.—The Secretary of the Treas-
19 ury shall maintain such accounts in the Fund as
20 may be required by this title or which the Secretary
21 of the Treasury determines to be necessary to carry
22 out this title.

23 "(b) PAYMENTS UPON CERTIFICATION.—Upon re-
24 ceipt of a certification from the Commission under section
25 503, the Secretary of the Treasury shall promptly pay the

1 amount certified by the Commission to the candidate out
2 of the Senate Election Campaign Fund.

3 “(c) MANAGEMENT OF FUND.—The provisions of
4 section 9602 of the Internal Revenue Code of 1986 shall
5 apply to the Senate Election Campaign Fund.

6 **“SEC. 507. REPORTS TO CONGRESS; REGULATIONS.**

7 “(a) REPORTS.—

8 “(1) REQUIREMENT.—The Commission shall,
9 as soon as practicable after each election, submit a
10 full report to the Senate setting forth—

11 “(A) the expenditures (shown in such de-
12 tail as the Commission determines appropriate)
13 made by each eligible Senate candidate and the
14 authorized committees of such candidate;

15 “(B) the amounts certified by the Commis-
16 sion under section 503 as benefits available to
17 each Senate candidate; and

18 “(C) the balance in the Senate Election
19 Campaign Fund, and the balance in any ac-
20 count maintained by the Fund.

21 “(2) PRINTING.—Each report submitted pursu-
22 ant to this section shall be printed as a Senate docu-
23 ment.

24 “(b) RULES AND REGULATIONS.—The Commission
25 is authorized to prescribe such rules and regulations, in

1 accordance with the provisions of subsection (c), to con-
 2 duct such examinations and investigations, and to require
 3 the keeping and submission of such books, records, and
 4 information, as it deems necessary to carry out the func-
 5 tions and duties imposed on it by this title.

6 “(c) STATEMENT TO SENATE.—Not later than 30
 7 days before prescribing any rule or regulation under sub-
 8 section (b), the Commission shall transmit to the Senate
 9 a statement setting forth the proposed rule or regulation
 10 and containing a detailed explanation and justification of
 11 such rule or regulation.”.

12 (b) PROVISIONS TO FACILITATE VOLUNTARY CON-
 13 TRIBUTIONS TO SENATE ELECTION CAMPAIGN FUND.—

14 (1) GENERAL RULE.—Part VIII of subchapter
 15 A of chapter 61 of the Internal Revenue Code of
 16 1986 (relating to returns and records) is amended
 17 by adding at the end the following:

18 **“Subpart B—Designation of Additional Amounts to**
 19 **Senate Election Campaign Fund**

“Sec. 6097. Designation of additional amounts.

20 **“SEC. 6097. DESIGNATION OF ADDITIONAL AMOUNTS.**

21 “(a) GENERAL RULE.—Every individual (other than
 22 a nonresident alien) who files an income tax return for
 23 any taxable year may designate an additional amount
 24 which is not less than \$1 and not more than \$5,000 to

1 be paid over to the Senate Election Campaign Fund estab-
 2 lished under section 508 of the Federal Election Cam-
 3 paign Act of 1971.

4 “(b) MANNER AND TIME OF DESIGNATION.—A des-
 5 ignation under subsection (a) may be made for any taxable
 6 year only at the time of filing the income tax return for
 7 the taxable year. Such designation shall be made on the
 8 page bearing the taxpayer’s signature.

9 “(c) TREATMENT OF ADDITIONAL AMOUNTS.—Any
 10 additional amount designated under subsection (a) for any
 11 taxable year shall, for all purposes of law, be treated as
 12 an additional income tax imposed by chapter 1 for such
 13 taxable year.

14 “(d) INCOME TAX RETURN.—For purposes of this
 15 section, the term ‘income tax return’ means the return of
 16 the tax imposed by chapter 1.”

17 (2) CONFORMING AMENDMENTS.—(A) Part
 18 VIII of subchapter A of chapter 61 of such Code is
 19 amended by striking the heading and inserting:

20 **“PART VIII—DESIGNATION OF AMOUNTS TO**
 21 **ELECTION CAMPAIGN FUNDS**

“Subpart A. Presidential Election Campaign Fund.

“Subpart B. Designation of additional amounts to Senate Elec-
 tion Campaign Fund.

1 **“Subpart A—Presidential Election Campaign Fund”.**

2 (B) The table of parts for subchapter A of
3 chapter 61 of such Code is amended by striking the
4 item relating to part VIII and inserting:

“Part VIII. Designation of amounts to election campaign funds.”.

5 (3) **EFFECTIVE DATE.**—The amendments made
6 by this subsection shall apply to taxable years begin-
7 ning after December 31, 1995.

8 (c) **AMENDMENT OF COMMUNICATIONS ACT OF**
9 **1934.**—Title III of the Communications Act of 1934 (47
10 U.S.C. 301 et seq.) is amended by inserting after section
11 315 the following new section:

12 **“FREE BROADCAST TIME FOR SENATE CANDIDATES**

13 **“SEC. 315A. (a)(1)** Notwithstanding section 315, a
14 licensee shall make available 2 hours of free broadcast
15 time to each eligible Senate candidate (as defined in sec-
16 tion 502 of the Federal Election Campaign Act of 1971)
17 in each State within its broadcast area. The licensee shall
18 make at least 1 hour of the free broadcast time available
19 during a prime time access period.

20 **“(2)** A licensee shall make free broadcast time avail-
21 able pursuant to this section during the period beginning
22 on the date that is 90 days before the date of a general
23 election or special election for the Senate and ending on
24 the day before the date of the election.

1 “(3) As used in this subsection, the term ‘prime time
2 access period’ means the time between 7 p.m. and 10 p.m.
3 of a weekday.

4 “(b) An appearance by a Senate candidate on a news
5 or public service program at the invitation of a broadcast-
6 ing station or other organization that presents such a pro-
7 gram shall not be counted toward time made available pur-
8 suant to subsection (a).

9 “(c)(1) A licensee shall make available free broadcast
10 time in accordance with this subsection to any eligible Sen-
11 ate candidate (as defined in section 502 of the Federal
12 Election Campaign Act of 1971) in each State within its
13 broadcast area if—

14 “(A) broadcast time was made available by the
15 licensee and the payment for such time constituted
16 an independent expenditure (as defined in section
17 301(17) of the Federal Election Campaign Act of
18 1971 (2 U.S.C. 431(17)); and

19 “(B) such independent expenditure was in op-
20 position to, or on behalf of an opponent of, such eli-
21 gible Senate candidate.

22 “(2) A person who reserves broadcast time the pay-
23 ment for which would constitute an independent expendi-
24 ture within the meaning of section 301(17) of the Federal

1 Election Campaign Act of 1971 (2 U.S.C. 431(17))
2 shall—

3 “(A) inform the licensee that payment for the
4 broadcast time will constitute an independent ex-
5 penditure; and

6 “(B) inform the licensee of the names of all
7 candidates for the office to which the proposed
8 broadcast relates.

9 “(3) Free broadcast time under this subsection shall
10 be provided within a reasonable period of time after the
11 broadcast time constituting the independent expenditure
12 described in paragraph (1), and shall be for the same class
13 and amount of time, and during the same period of the
14 day, as such broadcast time.”.

15 **SEC. 3. SOFT MONEY OF POLITICAL PARTIES.**

16 (a) **LIMITATIONS ON POLITICAL PARTY COMMIT-**
17 **TEES.**—Title III of the Federal Election Campaign Act
18 of 1971 is amended by inserting at the end the following
19 new section:

20 **“POLITICAL PARTY COMMITTEES**

21 **“SEC. 324. (a) LIMITATIONS ON NATIONAL COMMIT-**
22 **TEES.**—(1) A national committee of a political party, in-
23 cluding the congressional campaign committees of a politi-
24 cal party, and any entity that is established, financed,
25 maintained, or controlled by a national committee of a po-
26 litical party, including the national congressional cam-

1 paign committees of a political party, and any officer or
2 agents of such party committees or entity, shall not solicit
3 or accept contributions or transfers not subject to the limi-
4 tations, prohibitions, and reporting requirements of this
5 Act.

6 “(2) Any amount solicited, received, expended, or dis-
7 bursed directly or indirectly by a national, State, district,
8 or local committee of a political party during a calendar
9 year which might affect the outcome of a Federal election
10 shall be subject to the limitations, prohibitions, and re-
11 porting requirements of this Act, including—

12 “(A) voter registration;

13 “(B) get-out-the-vote activity;

14 “(C) generic campaign activity; and

15 “(D) any communication that identifies a Fed-
16 eral candidate (regardless of whether a State or local
17 candidate is also mentioned or identified).

18 “(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

19 (1) Subsection (a) shall not apply to expenditures or dis-
20 bursements made by a State, district, or local committee
21 of a political party for—

22 “(A) a contribution to a candidate other than
23 for Federal office, if such contribution is not des-
24 ignated or otherwise earmarked to pay for activities
25 described in subsection (a)(2);

1 “(B) the costs of a State, district, or local polit-
2 ical convention;

3 “(C) the non-Federal share of a State, district,
4 or local party committee’s administrative and over-
5 head expenses (excluding the compensation in any
6 month of any individual who spends more than 20
7 percent of his or her time on activity during such
8 month which may affect the outcome of a Federal
9 election), as determined under subsection (c);

10 “(D) the costs of grassroots campaign mate-
11 rials, including buttons, bumper stickers, and yard
12 signs, which solely name or depict a State or local
13 candidate; and

14 “(E) the cost of any campaign activity con-
15 ducted solely on behalf of a clearly identified State
16 or local candidate, excluding activities described
17 under subsection (a)(2).

18 “(2) For purposes of paragraph (1)(C), the non-Fed-
19 eral share of a party committee’s administrative and over-
20 head expenses shall be determined by applying the ratio
21 of the non-Federal disbursements to the total Federal ex-
22 penditures and non-Federal disbursements made by the
23 committee during the previous Presidential election year
24 to the committee’s administrative and overhead expenses
25 in the election year in question.

1 “(c) FUNDRAISING EXPENDITURES.—Any amount
2 spent by a national committee of a political party, includ-
3 ing the congressional campaign committees of a political
4 party, and any entity that is established, financed, main-
5 tained, or controlled by a national committee of a political
6 party, including the national congressional campaign com-
7 mittees of a political party, and any officer or agents of
8 such party committees or entity to raise funds that are
9 used, in whole or in part, in connection with the activities
10 described in subsection (b) shall be made from funds sub-
11 ject to the limitations, prohibitions, and reporting require-
12 ments of this Act.”.

13 (b) RESTRICTIONS ON FUNDRAISING BY CAN-
14 DIDATES AND OFFICEHOLDERS.—Section 315 of the Fed-
15 eral Election Campaign Act of 1971 (2 U.S.C. 441a) is
16 amended by adding at the end the following new sub-
17 section:

18 “(i)(1) The limitations, prohibitions, and reporting
19 requirements of this Act shall apply to the solicitation for,
20 and receipt of funds by, a candidate for Federal office,
21 an individual holding Federal office, or any agent of such
22 candidate or officeholder, in connection with any Federal
23 election.

24 “(2) Paragraph (1) shall not apply to the solicitation
25 or receipt of funds by an individual who is a candidate

1 for a non-Federal office if such activity is permitted under
2 State law.”.

3 (c) REPORTING REQUIREMENTS.—

4 (1) NATIONAL COMMITTEES.—Section 304 of
5 the Federal Election Campaign Act of 1971 (2
6 U.S.C. 434) is amended by adding at the end the
7 following new subsection:

8 “(d) POLITICAL COMMITTEES.—(1) The national
9 committee of a political party, any congressional campaign
10 committee of a political party, and any subordinate com-
11 mittee of either, shall report all receipts and disburse-
12 ments during the reporting period, whether or not in con-
13 nection with an election for Federal office.

14 “(2) Any political committee to which paragraph (1)
15 does not apply shall report any receipts or disbursements
16 that are used in connection with a Federal election.

17 “(3) If a political committee has receipts or disburse-
18 ments to which this subsection applies from any person
19 aggregating in excess of \$200 for any calendar year, the
20 political committee shall separately itemize its reporting
21 for such person in the same manner as required in sub-
22 section (b) (3)(A), (5), or (6).

23 “(4) Reports required to be filed under this sub-
24 section shall be filed for the same time periods required
25 for political committees under subsection (a).”.

1 (2) REPORT OF EXEMPT CONTRIBUTIONS.—

2 Section 301(8) of the Federal Election Campaign
3 Act of 1971 (2 U.S.C. 431(8)) is amended by insert-
4 ing at the end the following:

5 “(C) The exclusion provided in subparagraph
6 (B)(viii) shall not apply for purposes of any require-
7 ment to report contributions under this Act, and all
8 such contributions aggregating in excess of \$200
9 shall be reported.”.

10 (3) REPORTS BY STATE COMMITTEES.—Section
11 304 of the Federal Election Campaign Act of 1971
12 (2 U.S.C. 434), as amended by paragraph (1), is
13 amended by adding at the end the following new
14 subsection:

15 “(e) FILING OF STATE REPORTS.—In lieu of any re-
16 port required to be filed by this Act, the Commission may
17 allow a State committee of a political party to file with
18 the Commission a report required to be filed under State
19 law if the Commission determines such reports contain
20 substantially the same information.”.

21 (4) OTHER REPORTING REQUIREMENTS.—

22 (A) AUTHORIZED COMMITTEES.—Section
23 304(b)(4) of the Federal Election Campaign
24 Act of 1971 (2 U.S.C. 434(b)(4)) is amended—

1 (i) by striking “and” at the end of
2 subparagraph (H);

3 (ii) by inserting “and” at the end of
4 subparagraph (I); and

5 (iii) by adding at the end the follow-
6 ing new subparagraph:

7 “(J) in the case of an authorized commit-
8 tee, disbursements for the primary election, the
9 general election, and any other election in which
10 the candidate participates;”.

11 (B) NAMES AND ADDRESSES.—Section
12 304(b)(5)(A) of the Federal Election Campaign
13 Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amend-
14 ed—

15 (i) by striking “within the calendar
16 year”; and

17 (ii) by inserting “, and the election to
18 which the operating expenditure relates”
19 after “operating expenditure”.

20 **SEC. 4. PUBLIC SERVICE ANNOUNCEMENTS.**

21 Beginning on September 1 and continuing through
22 November 1 of each election year, the Federal Election
23 Commission shall carry out a program, utilizing public
24 service announcements, to provide basic information to the
25 public about—

1 (1) voter registration, including locations and
2 times; and

3 (2) voting requirements.

4 **SEC. 5. EFFECTIVE DATE.**

5 (a) **IN GENERAL.**—Except as otherwise provided in
6 this Act, the amendments made by, and the provisions of,
7 this Act shall take effect on the date of enactment of this
8 Act, but shall not apply with respect to activities in con-
9 nection with any election occurring before December 31,
10 1996.

11 (b) **CONTRIBUTIONS AND EXPENDITURES BEFORE**
12 **DATE OF ENACTMENT.**—This Act, and the amendments
13 made by this Act, shall not apply to contributions and ex-
14 penditures made before the date of enactment of this Act.

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